AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

9–15–08 Monday
Vol. 73 No. 179 Sept. 15, 2008

Pages 53105–53354

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WHEN: Tuesday, September 23, 2008
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Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0052; Directorate Identifier 2008–NE–01–AD; Amendment 39–15672; AD 2008–19–05]

RIN 2120–AA64

Airworthiness Directives; Engine Components, Inc. (ECi) Reciprocating Engine Cylinder Assemblies

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Lycoming Engines (formerly Textron Lycoming) models 320, 360, and 540 series, ''Parallel Valve'' reciprocating engines, with certain Engine Components, Inc. (ECi) cylinder assemblies, part number (P/N) AEL65102 series ''Titan'', installed. This AD requires initial and repetitive visual inspections and compression tests to detect cracks at the head-to-barrel interface, replacement of cylinder assemblies found cracked, and replacement of certain cylinder assemblies, at new reduced times-in-service. This AD results from reports of 45 failures with head separations of ECi cylinder assemblies. We are issuing this AD to prevent loss of engine power due to cracks at the head-to-barrel interface in the cylinder assemblies and possible engine failure caused by separation of a cylinder head, which could result in loss of control of the aircraft.

DATES: This AD becomes effective October 20, 2008.

ADDRESSES: You can get the service information identified in this AD from Engine Components, Inc., 9503 Middlex, San Antonio, TX 78217; Phone (800) 324–2359; fax (210) 820–8102; *http://www.eci2fly.com.*

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: Peter W. Hakala, Aerospace Engineer, Special Certification Office, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, TX 76193; e-mail: *peter.w.hakala@faa.gov;* telephone (817) 222–5145; fax (817) 222–5785.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to Lycoming Engines (formerly Textron Lycoming) models 320, 360, and 540 series, ''Parallel Valve'' reciprocating engines, with certain Engine Components Inc. (ECi) cylinder assemblies, part number (P/N) AEL65102 series ''Titan'', installed. We published the proposed AD in the **Federal Register** on May 19, 2008 (73 FR 28756). That action proposed to require initial and repetitive visual inspections and compression tests to detect cracks at the head-to-barrel interface, replacement of cylinder assemblies found cracked, and replacement of certain cylinder assemblies, at new reduced times-in-service.

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.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Reduce the Economic Impact

One commenter, the Aircraft Owners and Pilots Association, states that the 50-hour inspection interval should be increased to 100 hours, to reduce the economic impact of the cylinder assembly inspections. Another commenter, a private citizen, states that the cost of the 50-hour inspections was not considered in the NPRM economic estimate.

We do not agree. We selected the 50-hour inspection interval so that aluminum cylinder cracks could be detected before a head separation occurred. By removing leaking cylinder heads discovered during the periodic 50-hour inspections, the probability of having an in flight head separation is greatly reduced. Also, the 50-hour inspection interval coincides with the scheduled maintenance for normal engine oil and filter changes. Also, the costs of compliance in the NPRM did include costs for the additional cylinder assembly inspections. We did not change the AD.

Retiring Cylinder Assemblies at Time-Between-Overhaul Is Too Expensive

One commenter, a private citizen, states that it is too expensive to retire all the subject cylinder assemblies at the normal overhaul time. Another commenter, a private citizen, states that it is unreasonable for general aviation airplane owners, in Part 91 use, to be required to retire cylinder assemblies at the time-between-overhaul or at normal engine overhaul time.

We do not agree. The subject cylinder assemblies can be safely run to the normal TBO with the required 50-hour inspections, with compression tests. Because of metallurgical analysis results of the fatigue cracks in the aluminum alloy cylinder heads, and also the history of the head separation hours-in-service, the probability of a head separation is greater with the subject cylinder assemblies running past the time-between-overhaul time. Therefore, we do not consider the cylinder assemblies to be airworthy past the normal engine overhaul time. We did not change the AD.

Cylinder Assembly Serial Number Range Is Different in the ECi Mandatory Service Bulletin

One commenter, ECi., states that the cylinder assembly serial number range in the proposed AD for the Group ''B'' cylinders is slightly different from the serial numbers listed in the ECi Mandatory service Bulletin No. 08–1. The commenter states that several additional cylinder serial numbers should be included in Group ''B''.

We do not agree. We researched the cylinder assembly serial numbers in the proposed AD and they are correct. The Group ''A'' cylinder assemblies go up to serial number 35171–22. The Group ''B'' cylinder assemblies start at serial number 35239–01. We discussed the serial number comment with ECi. They agree that the serial number range in the proposed AD is correct. ECi states that they have revised the serial numbers in ECi. Mandatory Service Bulletin (MSB) No. 08–1 to match the serial numbers in the AD, and issued MSB No. 08–1, Revision 3, dated August 19, 2008. We now reference this MSB Revision 3 in the AD.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 13,000 ECi cylinder assemblies installed in aircraft of U.S. registry. The visual inspection and compression tests will take about 4 work-hours for each engine. An individual cylinder replacement will require $1,100 for parts and 6 work-hours. Lycoming engines with a set of 4 ECi cylinders will require 12 work-hours for the cylinder replacement. Lycoming engines with a set of 6 ECi cylinders will require 16 work-hours for the cylinder replacement. We estimate 18 percent of the affected population of cylinders will be replaced. We estimate the total cost of the AD to U.S. operators to be $7,952,000. Our estimate is exclusive of any 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 have 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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration 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:

2008–19–05 Engine Components, Inc. (ECi): Amendment 39–15672. Docket No. FAA–2008–0052; Directorate Identifier 2008–NE–01–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 20, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Lycoming Engines (formerly Textron Lycoming) models 320, 360, and 540 series, ''Parallel Valve'', reciprocating engines listed in Table 1 of this AD, with ECi cylinder assembly, part number (P/N) AEL65102 series ''Titan'', and with cylinder head, P/N AEL85099, installed.

(1) The applicable cylinder assembly serial numbers (SNs) are SN 1138–02 through SN 35171–22, (referred to in this AD as Group ''A'' cylinder assemblies); and

(2) SN 35239–01 through SN 37016–28 (referred to in this AD as Group ''B'' cylinder assemblies).

(3) Note that the cylinder assembly P/N is at the crankcase end of the cylinder assembly, and might be difficult to see. As a guide in determining if your cylinder assemblies are affected, all affected cylinder assemblies have cylinder head P/N AEL85099. The cylinder head P/N is at the top of the cylinder head, near the intake and exhaust valve springs, and is easier to locate than the cylinder assembly P/N.

(4) Note that the set of numbers appearing on the cylinder, above and to the left of the SN, in the form of ''123456'' is not used for determining applicability.

TABLE 1—ENGINE MODELS

Cylinder assembly part No.:	Installed on engine models:
AEL65102–NST04	O–320–A1B, A2B, A2C, A2D, A3A, A3B, B2B, B2C, B2D, B2E, B3B, B3C, C2B, C2C, C3B, C3C, D1A, D1AD, D1B, D1C, D1D, D1F, D2A, D2B, D2C, D2F, D2G, D2H, D2J, D3G, E1A, E1B, E1C, E1F, E1J, E2A, E2B, E2C, E2D, E2E, E2F, E2G, E2H, E3D, E3H IO–320–A1A, A2A, B1A, B1B, B1C, B1D, B1E, B2A, D1A, D1AD, D1B, D1C, E1A, E1B, E2A, E2B AEIO–320–D1B, D2B, E1A, E1B, E2A, E2B AIO–320–A1A, A1B, A2A, A2B, B1B, C1B

TABLE 1—ENGINE MODELS—Continued

Cylinder assembly part No.:	Installed on engine models:
	LIO–320–B1A
AEL65102–NST05	IO–320–C1A, C1B, C1F, F1A LIO–320–C1A
AEL65102–NST06	O–320–A1A, A2A, A2B, A2C, A3A, A3B, A3C, E1A, E1B, E2A, E2C, (also, an O–320 model with no suffix) IO–320–A1A, A2A
AEL65102–NST07	IO–320–B1A, B1B LIO–320–B1A
AEL65102–NST08	O–320–B1A, B1B, B2A, B2B, B3A, B3B, B3C, C1A, C1B, C2A, C2B, C3A, C3B, C3C, D1A, D1B, D2A, D2B, D2C
AEL65102–NST10	O–360–A1A, A1C, A1D, A2A, A2E, A3A, A3D, A4A, B1A, B1B, B2A, B2B, C1A, C1C, C1G, C2A, C2B, C2C, C2D, D1A, D2A, D2B IO–360–B1A, B1B, B1C HO–360–A1A, B1A, B1B HIO–360–B1A, B1B AEIO–360–B1B O–540–A1A, A1A5, A1B5, A1C5, A1D, A1D5, A2B, A3D5, A4A5, A4B5, A4C5, A4D5, B1A5, B1B5, B1D5, B2A5, B2B5, B2C5, B2C5D, B4A5, B4B5, B4B5D, D1A5, E1A, E4A5, E4B5, E4C5, F1A5, F1B5, G1A5, G2A5 IO–540–C1B5, C1C5, C2C, C4B5, C4B5D, C4C5, D4A5, D4B5, N1A5, N1A5D
AEL65102–NST12	O–360–A1A, A1AD, A1D, A1F, A1F6, A1F6D, A1G, A1G6, A1G6D, A1H, A1H6, A1J, A1LD, A1P, A2A, A2D, A2F, A2G, A2H, A3A, A3AD, A3D, A4A, A4AD, A4D, A4G, A4J, A4JD, A4K, A4M, A4N, A4P, A5AD, B1A, B2C, C1A, C1C, C1E, C1F, C1G, C2A, C2B, C2C, C2D, C2E, C4F, C4P, D2A, F1A6, G1A6 HO–360–C1A LO–360–A1G6D, A1H6 HIO–360–B1A, B1B, G1A LTO–360–A1A6D TO–360–A1A6D IO–360–B1B, B1BD, B1D, B1E, B1F, B1F6, B1G6, B2E, B2F, B2F6, B4A, E1A, L2A, M1A, M1B AEIO–360–B1B, B1D, B1E, B1F, B1F6, B1G6, B1H, B2F, B2F6, B4A, H1A, H1B O–540–A4D5, B2B5, B2C5, B2C5D, B4B5, B4B5D, E4A5, E4B5, E4B5D, E4C5, G1A5, G1A5D, G2A5, H1A5, H1A5D, H1B5, H1B5D, H2A5, H2A5D, H2B5D IO–540–C4B5, C4B5D, C4D5, C4D5D, D4A5, D4B5, D4C5, N1A5, N1A5D, T4A5D, T4B5, T4B5D, T4C5D, V4A5, V4A5D AEIO–540–D4A5, D4B5, D4C5, D4D5
AEL65102–NST26	IO–540–J4A5, R1A5 TIO–540–C1A, E1A, G1A, H1A
AEL65102–NST38	IO–360–F1A TIO–540–AA1AD, AB1AD, AB1BD, AF1A, AG1A, AK1A, C1A, C1AD, K1AD LTIO–540–K1AD
AEL65102–NST43	O–360–J2A O–540–F1B5, J1A5D, J1B5D, J1C5D, J1D5D, J2A5D, J2B5D, J2C5D, J2D5D, J3A5, J3A5D, J3C5D IO–540–AB1A5, W1A5, W1A5D, W3A5D
AEL65102–NST44	O–540–L3C5D

For information, the Lycoming Engines (formerly Textron Lycoming) models 320, 360, and 540 series, ''Parallel Valve'', reciprocating engines are installed on, but not limited to, the aircraft listed in the following Table 2:

TABLE 2—ENGINES INSTALLED ON, BUT NOT LIMITED TO

Engine models:	Installed on, but not limited to:
O–320–A1A	Piper Aircraft: Tri-Pacer (PA–22 ''150'', PA–22S ''150''), Apache (PA–23), Pawnee (PA–25). Doyn Aircraft: Doyn-Cessna (170, 170A, 170B). Mooney Aircraft: Mark (20A). Dinfia: Ranquel (1A–46). Simmering-Graz Pauker: Flamingo (SGP–M–222). Aviamilano: Scricciolo (P–19). Vos Helicopter Co.: Spring Bok.
O–320–A1B	Piper Aircraft: Tri-Pacer (PA–22 ''150'', PA–22S ''150''), Apache (PA–23). Doyn Aircraft: Doyn-Cessna (170, 170A, 170B). S.O.C.A.T.A.: Horizon (Gardan).

TABLE 2—ENGINES INSTALLED ON, BUT NOT LIMITED TO—Continued

Engine models:	Installed on, but not limited to:
O–320–A2A	Piper Aircraft: Tri-Pacer (PA–22 "150", PA–22S "150"), Agriculture (PA–18A "150") Super Cub (PA–18 "150"), Caribbean (PA–22 "150"), Pawnee (PA–25).
	Intermountain Mfg. Co.: Call Air Texas (A–5, A–5T).
	Lake Aircraft: Colonial (C–1).
	Rawdon Bros.: Rawdon (T–1, T–15, T–15D).
	Shinn Engineering: Shinn (2150–A).
	Dinfia: Ranquel ((1A)46).
	Neiva: (1PD–5802).
	Sud: Gardan-Horizon (GY–80).
	LaVerda: Falco (F8L Series II, America).
	Malmo: Vipan (MF1–10).
	Kingsford Smith: Autocrat (SCRM–153).
	Aero Commander: 100.
O–320–A2B	Piper Aircraft: Tri-Pacer (PA–22 "150", PA–22S "150"), Cherokee (PA–28 "150"), Super Cub (PA–18 "150").
	Champion Aircraft: Challenger (7GCA, 7GCB, 7KC), Citabria (7GCAA, 7GCRC), Agriculture (7GCBA).
	Beagle: Pup (150).
	Artic: Interstate S1B2.
	Robinson: R–22.
	Varga: Kachina 2150A.
O–320–A2C	Robinson: R–22.
	Cicare: Cicare AG.
	Bellanca Aircraft: Citabria 150 (7GCAA), Citabria 150S (7GCBC).
O–320–A2D	Piper Aircraft: Apache (PA–23).
O–320–A3A	Doyn Aircraft: Doyn-Cessna (170, 170A, 170B).
	Corben-Fettes: Globe Special (Globe GC–1B).
O–320–A3B	Piper Aircraft: Apache (PA–23).
	Doyn Aircraft: Doyn-Cessna (170, 170A, 170B).
	Teal II: TSC (1A2).
O–320–B1A	Piper Aircraft: Apache (PA–23 "160").
	Doyn Aircraft: Doyn-Cessna (170, 170A, 170B).
	Malmo: Vipan (MF1–10).
O–320–B1B	Piper Aircraft: Apache (PA–23 "160").
	Doyn Aircraft: Doyn-Cessna (170, 170A, 170B).
O–320–B2A	Piper Aircraft: Tri-Pacer (PA–22 "160", PA–22S "160").
O–320–B2B	Piper Aircraft: Tri-Pacer (PA–22 "160", PA–22S "160").
	Beagle: Airedale (D5–160).
	Fuji-Heavy Industries: Fuji (F–200).
	Uirapuru: Aerotec 122.
O–320–B2C	Robinson: R–22.
O–320–B2D	Maule: MX–7–160.
O–320–B2E	Lycon.
O–320–B3A	Piper Aircraft: Apache (PA–23 "160").
	Doyn Aircraft: Doyn-Cessna (170, 170A, 170B).
O–320–B3B	Piper Aircraft: Apache (PA–23 "160").
	Doyn Aircraft: Doyn-Cessna (170, 170A, 170B).
	Sud: Gardan (GY80–160).
O–320–C1A	Piper Aircraft: Apache (PA–23 "160").
	Riley Aircraft: Rayjay (Apache).
O–320–C1B	Piper Aircraft: Apache (PA–23 "160").
O–320–C3A	Piper Aircraft: Apache (PA–23 "160").
O–320–C3B	Piper Aircraft: Apache (PA–23 "160").
O–320–D1A	Sud: Gardan (GY–80).
	Gyroflug: Speed Cancard.
	Grob: G115.
O–320–D1F	Slingsby: T67 Firefly.
O–320–D2A	Piper Aircraft: Cherokee (PA–28S "160").
	Robin: Major (DR400–140B), Chevalier (DR–360), (R–3140).
	S.O.C.A.T.A.: Tampico TB9.
	Slingsby: T67C Firefly.
	Daetwyler: MD–3–160.
	Nash Aircraft Ltd.: Petrel.
	Aviolight: P66D Delta.
	General Avia: Pinguino.
O–320–D2B	Beech Aircraft: Musketeer (M–23).
	Piper Aircraft: Cherokee (PA–28 "160").
O–320–D2J	Cessna Aircraft: Skyhawk 172.
O–320–D3G	Piper Aircraft: Warrior II, Cadet (PA–28–161).
O–320–E1A	Grob: G115.
O–320–E1C	M.B.B. (Messerschmitt-Boelkow-Blohm): Monsun (BO–209–B).
O–320–E1F	M.B.B.: Monsun (BO–209–B).
O–320–E2A	Piper Aircraft: Cherokee (PA–28 "140", PA–28 "150").
	Robin: Major (DR–340), Sitar, Bagheera (GY–100–135).

TABLE 2—ENGINES INSTALLED ON, BUT NOT LIMITED TO—Continued

Engine models:	Installed on, but not limited to:
	S.O.C.A.T.A.: Super Rallye (MS–886), Rallye Commodore (MS–892).
	Siai-Marchetti: (S–202).
	F.F.A.: Bravo (AS–202/15).
	Partenavia: Oscar (P66B), Bucker (131 APM).
	Aeromot: Paulistina P–56.
	Pezetel: Koliber 150.
O–320–E2C	Beech Aircraft: Musketeer III (M–23III).
	M.B.B.: Monsun (BO–209–B).
O–320–E2D	Cessna Aircraft: Cardinal (172–I, 177).
O–320–E2F	M.B.B.: Monsun (BO–209–B), Wassmer Pacific (WA–51).
O–320–E2G	American Aviation Corp.: Traveler.
O–320–E3D	Piper Aircraft: Cherokee (140).
	Beech Aircraft: Sport.
IO–320–B2A	Piper Aircraft: Twin Comanche (PA–30).
IO–320–B1C	Hi. Shear: Wing.
IO–320–B1D	Ted Smith Aircraft: Aerostar.
IO–320–C1A	Piper Aircraft: Twin Comanche (PA–30 Turbo).
IO–320–D1A	M.B.B.: Monsun (BO–209–C).
IO–320–D1B	M.B.B.: Monsun (BO–209–C).
IO–320–E1A	M.B.B.: Monsun (BO–209–C).
IO–320–E1B	Bellanca Aircraft.
IO–320–E2A	Champion Aircraft: Citabria.
IO–320–E2B	Bellanca Aircraft.
IO–320–F1A	CAAR Engineering: Carr Midget.
LIO–320–B1A	Piper Aircraft: Twin Comanche (PA–39).
LIO–320–C1A	Piper Aircraft: Twin Comanche (PA–39).
AIO–320–B1B	M.B.B.: Monsun (BO–209–C).
AEIO–320–D1B	Slingsby: T67M Firefly.
AEIO–320–D2B	Hundustan Aeronautics Ltd.: HT–2.
AEIO–320–E1A	Bellanca Aircraft.
	Champion Aircraft.
AEIO–320–E1B	Bellanca Aircraft.
	Champion Aircraft: Decathalon (8KCAB–CS).
AEIO–320–E2B	Bellanca Aircraft.
	Champion Aircraft: Decathalon (8KCAB).
O–320–A1A.	Riley Aircraft: Riley Twin.
O–360–A1A.	Beech Aircraft: Travel Air (95, B–95).
	Piper Aircraft: Comanche (PA–24).
	Intermountain Mfg. Co.: Call Air (A–6).
	Lake Aircraft: Colonial (C–2, LA–4, 4A or 4P).
	Doyn Aircraft: Doyn-Cessna (170B, 172, 172A, 172B).
	Mooney Aircraft: Mark "20B" (M–20B).
	Earl Horton: Pawnee (Piper PA–25).
	Dinfia: Ranquel (1A–51).
	Neiva: (1PD–5901).
	Regente: (N–591).
	Wassmer: Super 4 (WA–50A), Sancy (WA–40), Baladou (WA–40), Pariou (WA–40).
	Sud: Gardan (GY–180).
	Bolkow: (207).
	Partenavia: Oscar (P–66).
	Siai-Marchetti: (S–205).
	Procaer: Picchio (F–15–A).
	S.A.A.B.: Safir (91–D).
	Malmo: Vipan (MF–10B).
	Aero Boero: AB–180.
	Beagle: Airedale (A–109).
	DeHavilland: Drover (DHA–3MK3).
	Kingsford-Smith: Bushmaster (J5–6).
	Aero Engine Service Ltd.: Victa (R–2).
O–360–A1AD	S.O.C.A.T.A.: Tabago TB–10.
O–360–A1D	Piper Aircraft: Comanche (PA–24).
	Lake Aircraft: Colonial (LA–4, 4A or 4P).
	Doyn Aircraft: Doyn-Beech (Beech 95).
	Mooney Aircraft: Master "21" (M–20E), Mark "20B", "20D", (M20B, M20C), Mooney Statesman (M–20G).
	Dinfia: Querandi (1A–45).
	Wassmer: (WA–50).
	Malmo: Vipan (MF1–10).
	Cessna Aircraft: Skyhawk.
	Doyn Aircraft: Doyn-Piper (PA–23 "160").
O–360–A1F6	Cessna Aircraft: Cardinal.
O–360–A1F6D	Cessna Aircraft: Cardinal 177.
	Teal III: TSC (1A3).

TABLE 2—ENGINES INSTALLED ON, BUT NOT LIMITED TO—Continued

Engine models:	Installed on, but not limited to:
O–360–A1G6	Aero Commander.
O–360–A1G6D	Beech Aircraft: Duchess 76.
O–360–A1H6	Piper Aircraft: Seminole (PA–44).
O–360–A1LD	Wassmer: Europa WA–52.
O–360–A1P	Aviat: Husky.
O–360–A2A	Center Est Aeronautique: Regente (DR–253).
	S.O.C.A.T.A.: Rallye Commodore (MS–893).
	Societe Aeronautique Normande: Mousquetaire (D–140).
	Bolkow: Klemm (K1–107C).
	Partenavia: Oscar (P–66).
	Beagle: Husky (D5–180) (J1–U).
O–360–A2D	Piper Aircraft: Comanche (PA–24), Cherokee "C" (PA–28 "180").
	Mooney Aircraft: Master "21" (M–20D), Mark "21" (M–20E).
O–360–A2E	Std. Helicopter.
O–360–A2F	Aero Commander: Lark (100).
	Cessna Aircraft: Cardinal.
O–360–A2G	Beech Aircraft: Sport.
O–360–A3A	C.A.A.R.P.S.A.N.: (M–23III).
	Societe Aeronautique Normande: Jodel (D–140C).
	Robin: Regent (DR400/180), Remorqueur (DR400/180R). R–3170.
	S.O.C.A.T.A.: Rallye 180GT, Sportavia Sportsman (RS–180).
	Norman Aeroplace Co.: NAC–1 Freelance.
	Nash Aircraft Ltd.: Petrel.
O–360–A3AD	S.O.C.A.T.A.: TB–10.
	Robin: Aiglon (R–1180T).
O–360–A4A	Piper Aircraft: Cherokee "D" (PA–28 "180").
O–360–A4D	Varga: Kachina.
O–360–A4G	Beech Aircraft: Musketeer Custom III.
O–360–A4K	Grumman American: Tiger.
	Beech Aircraft: Sundowner 180.
O–360–A4M	Piper Aircraft: Archer II (PA–28 "18").
	Valmet: PIK–23.
O–360–A4N	Cessna Aircraft: 172 (Optional).
O–360–A4P	Penn Yan: Super Cub Conversion.
O–360–A5AD	C. Itoh and Co.: Fuji FA–200.
O–360–B2C	Seabird Aviation: SB7L.
O–360–C1A	Intermountain Mfg. Co.: Call Air (A–6).
O–360–C1E	Bellanca Aircraft: Scout (8GCBC–CS).
O–360–C1F	Maule: Star Rocket MX–7–180.
O–360–C1G	Christen: Husky (A–1).
O–360–C2B	Hughes Tool Co.:HIO-360-B1A (269A).
O–360–C2D	Hughes Tool Co.: (269A).
O–360–C2E	Hughes Tool Co.: (YHO–2HU) Military.
	Bellanca Aircraft: Scout (8GCBC FP).
O–360–C4F	Maule: MX–7–180A.
O–360–C4P	Penn Yan: Super Cub Conversion.
O–360–F1A6	Cessna Aircraft: Cutlass RG.
O–360–J2A	Robinson: R22.
IO–360–B1A	Beech Aircraft: Travel-Air (B–95A).
	Doyn Aircraft: Doyn-Piper (PA–23 "200").
IO–360–B1B	Beech Aircraft: Travel-Air (B–95B).
	Doyn Aircraft: Doyn-Piper (PA–23 "200").
	Fuji: (FA–200).
IO–360–B1D	United Consultants: See-Bee.
IO–360–B1E	Piper Aircraft: Arrow (PA–28 "180R").
IO–360–B1F	Utva: 75.
IO–360–B2E	C.A.A.R.P.C.A.P. (10).
IO–360–B1F6	Great Lakes: Trainer.
IO–360–B1G6	American Blimp: Spector 42.
IO–360–B2F6	Great Lakes: Trainer.
LO–360–A1G6D	Beech Aircraft: Duchess.
LO–360–A1H6	Piper Aircraft: Seminole (PA–44).
IO–360–E1A	T.R. Smith Aircraft: Aerostar.
IO–360–L2A	Cessna Aircraft: Skyhawk C–172.
IO–360–M1A	Diamond Aircraft: DA–40.
IO–360–M1B	Vans Aircraft: RV6, RV7, RV8.
	Lancair: 360.
AEIO–360–B1F	F.F.A.: Bravo (200).
	Grob: G115/Sport-Acro.
AEIO–360–B1G6	Great Lakes.
AEIO–360–B2F	Mundry: CAP–10.
AEIO–360–B4A	Pitts: S–1S.

TABLE 2—ENGINES INSTALLED ON, BUT NOT LIMITED TO—Continued

Engine models:	Installed on, but not limited to:
AEIO–360–H1A	Bellanca Aircraft: Super Decathalon (8KCAB–180).
AEIO–360–H1B	American Champion: Super Decathalon.
VO–360–A1A	Brantly Hynes Helicopter: (B–2).
VO–360–A1B	Brantly Hynes Helicopter: (B–2, B2–A). Military (YHO–3BR).
VO–360–B1A	Brantly Hynes Helicopter: (B–2, B2–A).
IVO–360–A1A	Brantly Hynes Helicopter: (B2–B).
HO–360–B1A	Hughes Tool Co.: (269A).
HO–360–B1B	Hughes Tool Co.: (269A).
HO–360–C1A	Schweizer: (300C).
HIO–360–B1A	Hughes Tool Co.: Military (269–A–1) (TH–55A).
HIO–360–B1B	Hughes Tool Co.: (269A).
HIO–360–G1A	Schweizer: (CB).
O–540–A1A	Rhein-Flugzeugbau: (RF–1).
O–540–A1A5	Piper Aircraft: Comanche (PA–24 ''180'').
	Helio: Military (H–250).
	Yoeman Aviation: (YA–1).
O–540–A1B5	Piper Aircraft: Aztec (PA–23 ''250''), Comanche (PA–24 ''250'').
O–540–A1C5	Piper Aircraft: Comanche (PA–24 ''250'').
O–540–A1D	Found Bros.: (FBA–2C).
	Dornier: (DO–28–B1).
O–540–A1D5	Piper Aircraft: Aztec (PA–23 ''250''), Comanche (PA–24 ''250''), Military Aztec (U–11A).
	Dornier: (DO–28).
O–540–A2B	Aero Commander: (500).
	Mid-States Mfg. Co.: Twin Courier (H–500) (U–5).
O–540–A3D5	Piper Aircraft: Navy Aztec (PA–23 ''250'').
O–540–B1A5	Piper Aircraft: Apache (PA–23 ''235'').
O–540–B1B5	Piper Aircraft: Comanche (PA–24 ''250'').
	Doyn Aircraft: Doyn-Piper (PA–24 ''250'').
O–540–B1D5	Wassmer: (WA–421).
O–540–B2B5	Piper Aircraft: Pawnee (PA–25 ''235''), Cherokee (PA–28 ''235''), Aztec (PA–23 ''235'').
	Intermountain Mfg. Co.: Call Air (A–9).
	Rawdon Bros.: Rawdon (T–1).
	S.O.C.A.T.A.: Rallye 235CA.
O–540–B2C5	Piper Aircraft: Pawnee (PA–25 ''235'').
O–540–B4B5	Piper Aircraft: Cherokee (PA–28 ''235'').
	Embraer: Corioca (EMB–710).
	S.O.C.A.T.A.: Rallye 235GT, Rallye 235C.
	Maule: Star Rocket (MX–7–235), Super Rocket (M–6–235), Super Std. Rocket (M–7–235).
O–540–E4A5	Piper Aircraft: Comanche (PA–24 ''260'').
	Aviamilano: Flamingo (F–250).
	Siai-Marchetti: (SF–260) (SF–208).
O–540–E4B5	Britten-Norman: (BN–2).
	Piper Aircraft: Cherokee Six (PA–32 ''260'').
O–540–E4C5	Pilatus Britten-Norman: Islander (BN–2A–26), Islander (BN–2A–27), Islander II (BN–2B–26), Islander (BN–2A–21), Trislander (BN–2A–Mark III–2).
O–540–F1B5	Omega Aircraft: (BS–12D1).
	Robinson: (R–44).
O–540–G1A5	Piper Aircraft: Pawnee (PA–25 ''260'').
O–540–H1B5D	Aero Boero: 260.
O–540–H2A5	Embraer: Impanema ''AG''.
	Gippsland: GA–200.
O–540–H2B5D	Aero Boero: 260.
O–540–J1A5D	Maule: Star Rocket (MX–7–235), Super Rocket (M–6–235), Super Std. Rocket (M–7–235).
O–540–J3A5	Robin: R–3000/235.
O–540–J3A5D	Piper Aircraft: Dakota (PA–28–236).
O–540–J3C5D	Cessna Aircraft: Skylane RG.
O–540–L3C5D	Cessna Aircraft: TR–182, Turbo Skylane RG.
IO–540–C1B5	Piper Aircraft: Aztec B (PA–23 ''250''), Comanche (PA–24 ''250'').
IO–540–C1C5	Riley Aircraft: Turbo-Rocket.
IO–540–C4B5	Piper Aircraft: Aztec C (PA–23 ''250''), Aztec F.
	Wassmer: (WA4–21).
	Avions Pierre Robin: (HR100/250).
	Bellanca Aircraft: Aries T–250.
	Aerofab: Renegade 250.
IO–540–C4D5	S.O.C.A.T.A.: TB–20.
IO–540–C4D5D	S.O.C.A.T.A.: Trinidad TB–20.
IO–540–D4A5	Piper Aircraft: Comanche (PA–24 ''260'').
	Siai-Marchetti: (SF–260).
IO–540–D4B5	Cerva: (CE–43 Guepard).
IO–540–J4A5	Piper Aircraft: Aztec (PA–23 ''250'').
IO–540–R1A5	Piper Aircraft: Comanche (PA–24).
IO–540–T4A5D	General Aviation: Model 114.

TABLE 2—ENGINES INSTALLED ON, BUT NOT LIMITED TO—Continued

Engine models:	Installed on, but not limited to:
IO–540–T4B5	Commander: 114B.
IO–540–T4B5D	Rockwell: 114.
IO–540–T4C5D	Lake Aircraft: Seawolf.
IO–540–V4A5	Maule: MT–7–260, M–7–260.
	Aircraft Manufacturing Factory.
IO–540–V4A5D	Brooklands: Scoutmaster.
IO–540–W1A5	Maule: MX–7–235, MT–7–235, M7–235.
IO–540–W1A5D	Maule: Star Rocket (MX–7–235), Super Rocket (M–6–235), Super Std. Rocket (M–7–235).
IO–540–W3A5D	Schweizer: Power Glider.
AEIO–540–D4A5	Christen: Pitts (S–2S) (S–2B).
	Siai-Marchetti: SF–260.
	H.A.L.: HPT–32.
	Slingsby: Firefly T3A.
AEIO–540–D4B5	Moravan: Zlin–50L.
	H.A.L.: HPT–32.
AEIO–540–D4D5	Burkhart Grob: Grob G, 115T Aero.
TIO–540–C1A	Piper Aircraft: Turbo Aztec (PA–23–250).
TIO–540–K1AD	Piper Aircraft.
TIO–540–AA1AD	Aerofab Inc.: Turbo Renegade (270).
TIO–540–AB1AD	S.O.C.A.T.A.: Trinidad TC TB–21.
TIO–540–AB1BD	Schweizer.
TIO–540–AF1A	Mooney Aircraft: "TLS" M20M.
TIO–540–AG1A	Commander Aircraft: 114TC.
TIO–540–AK1A	Cessna Aircraft: Turbo Skylane T182T.
LTIO–540–K1A	Piper Aircraft.

Unsafe Condition

(d) This AD results from reports of 45 failures with head separations of ECi cylinder assemblies. We are issuing this AD to prevent loss of engine power due to cracks at the head-to-barrel interface in the cylinder assemblies and possible engine failure caused by separation of a cylinder head, which could result in loss of control of the aircraft.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Engines Not Overhauled or Cylinder Assemblies Not Replaced Since New

(f) If your engine has not been overhauled or had any cylinder assemblies replaced since new, no further action is required.

Engines Overhauled or Cylinder Assemblies Replaced Since New

(g) If your engine was overhauled or had a cylinder assembly replaced since new, do the following:

(1) Before further flight, inspect the maintenance records and engine logbook to determine if the overhaul or repair facility used ECi cylinder assemblies, P/N AEL65102, with cylinder head, PN AEL85099, with a SN 1138–02 through SN 35171–22, or a SN 35239–01 through SN 37016–28, installed.

(2) If the cylinder assemblies are not ECi, P/N AEL65102, no further action is required.

(3) If the cylinder assemblies are ECi, P/N AEL65102, and if the serial number is not listed in this AD, no further action is required.

(4) If the cylinder assemblies are ECi, P/N AEL65102, and if the serial number is listed in this AD, do the following:

Group "A" Cylinder Assemblies

(i) For Group "A" cylinder assemblies:

(A) Perform an initial visual inspection as specified in paragraphs (h) through (j) of this AD, and an initial compression test as specified in paragraphs (k) through (o) of this AD, within the next 10 operating hours time-in-service (TIS), if the cylinder assembly has 350 or more operating hours TIS on the effective date of this AD, but fewer than 2,000 operating hours TIS.

(B) Perform an initial visual inspection as specified in paragraphs (h) through (j) of this AD, and an initial compression test as specified in paragraphs (k) through (o) of this AD, before exceeding 350 operating hours TIS, if the cylinder assembly has fewer than 350 operating hours TIS on the effective date of this AD.

(C) Replace cylinder assemblies installed in helicopter engines within the next 25 operating hours TIS after the effective date of this AD if the cylinder assembly has 1,500 operating hours TIS or more on the effective date of this AD.

(D) Replace cylinder assemblies installed in airplane engines within the next 25 operating hours TIS after the effective date of this AD if the cylinder assembly has 2,000 operating hours TIS or more on the effective date of this AD.

(E) Perform repetitive visual inspections as specified in paragraphs (h) through (j) of this AD, and repetitive compression tests as specified in paragraphs (k) through (o) of this AD, within every 50 operating hours TIS.

(F) Replace cylinder assemblies installed in helicopter engines that pass the visual inspections and compression tests, no later than 1,500 operating hours TIS after the effective date of this AD.

(G) Replace cylinder assemblies installed in airplane engines that pass the visual inspections and compression tests, no later than 2,000 operating hours TIS after the effective date of this AD.

Group "B" Cylinder Assemblies

(ii) For Group "B" cylinder assemblies:

(A) Perform an initial visual inspection as specified in paragraphs (h) through (j) of this AD, and initial compression test as specified in paragraphs (k) through (o) of this AD, within an additional 10 operating hours TIS.

(B) Replace the cylinder assembly within the next 25 operating hours TIS after the effective date of this AD if the cylinder assembly has 350 or more operating hours TIS on the effective date of this AD.

(C) Replace cylinder assemblies that pass the initial visual inspections and compression tests, before exceeding 350 operating hours TIS after the effective date of this AD.

Visual Inspection

(h) Visually inspect around the exhaust valve side, for cracks or any signs of black or white residue of combustion leakage from cracks.

(i) Replace cracked cylinder assemblies before further flight.

(j) Information on cylinder assembly visual inspection can be found in ECi Mandatory Service Bulletin (MSB) No. 08–1, Revision 3, dated August 19, 2008.

Cylinder Assembly Compression Test

(k) Compression test the cylinder assembly.

(l) Information on cylinder assembly compression testing can be found in ECi MSB No. 08–1, Revision 3, dated August 19, 2008.

(m) During the compression test, if the cylinder pressure gauge reads below 70 pounds-per-square-inch, apply a water and

soap solution to the side of the leaking cylinder, near the head-to-barrel interface.

(n) Replace the cylinder assembly before further flight, if air leakage and bubbles are observed on the side of the cylinder assembly, near the head-to-barrel interface.

(o) Repair or replace the engine cylinder assembly before further flight if the cause of the low gauge reading in paragraph (m) of this AD is from leaking intake or exhaust valves, or from leaking piston rings.

Prohibition of ECi Cylinder Assemblies Affected by This AD

(p) After the effective date of this AD, do not install any ECi cylinder assembly, P/N AEL65102, with cylinder head, P/N AEL85099, and with SN 1138–02 through SN 35171–22, or SN 35239–01 through SN 37016–28, onto any engine, and do not attempt to repair or reuse these ECi cylinder assemblies.

Alternative Methods of Compliance

(q) The Manager, Special Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Special Flight Permits

(r) Under 14 CFR 39.23, we will not approve special flight permits for this AD for engines that have failed the visual inspection or the cylinder assembly compression test required by this AD.

Related Information

(s) ECi Mandatory Service Bulletin No. 08–1, Revision 3, dated August 19, 2008, pertains to the subject of this AD.

(t) Contact Peter W. Hakala, Aerospace Engineer, Special Certification Office, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, TX 76193; e-mail: *peter.w.hakala@faa.gov*; telephone (817) 222–5145; fax (817) 222–5785, for more information about this AD.

Issued in Burlington, Massachusetts, on September 5, 2008.

Peter A. White,

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

[FR Doc. E8–21125 Filed 9–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0366; Airspace Docket No. 08–ANM–5]

Establishment of Class E Airspace; Weiser, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E airspace at Weiser Municipal Airport, Weiser, ID. Controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Weiser Municipal Airport, Weiser, ID. This will improve the safety of Instrument Flight Rules (IFR) aircraft executing the new RNAV GPS SIAP at Weiser Municipal Airport, Weiser, ID.

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: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Area, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On June 16, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish controlled airspace at Weiser, ID (73 FR 33940). 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 Weiser, ID. Additional controlled airspace is necessary to accommodate IFR aircraft executing a new RNAV (GPS) approach procedure at Weiser Municipal Airport, Weiser, ID.

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 Weiser Municipal Airport, Weiser, ID.

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 700 feet or more above the surface of the earth.

* * * * *

ANM ID, E5 Weiser, ID [New]

Weiser Municipal Airport, ID
(Lat. 44°12′17″ N., Long. 116°57′38″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Weiser Municipal Airport.

* * * * *

Issued in Seattle, Washington, on August 28, 2008.

Kevin Nolan,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E8–21225 Filed 9–12–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[Docket No. DOT–OST–2008–0272 and DOT–OST–2008–0273]

Nondiscrimination on the Basis of Disability in Air Travel

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of availability of electronic submission.

SUMMARY: The Department of Transportation is publishing the following document regarding the provisions on conflict of laws and equivalent alternative determinations contained in the Office of the Secretary (OST) final rule on ''Nondiscrimination on the Basis of Disability in Air Travel'' (73 FR 27614; May 13, 2008). The document announces the availability of electronic submissions for conflict of law waiver requests and applications for equivalent alternative determinations through the Federal Docket Management System (FDMS). It also provides guidance to U.S. and foreign air carriers on how to submit such requests and applications through FDMS.

DATES: This document is effective on September 15, 2008.

FOR FURTHER INFORMATION CONTACT: Blane A. Workie, Chief, Aviation Civil Rights Compliance Branch, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Avenue, SE., Room W98–310, Washington, DC 20590, (202) 366–9342.

SUPPLEMENTARY INFORMATION: On May 13, 2008, the Department of Transportation published a final rule amending its Air Carrier Access Act (ACAA) rules to apply to foreign air carriers and adding new provisions concerning passengers who use medical oxygen and passengers who are deaf or hard-of-hearing. The rule, which applies to U.S. carriers wherever their operations take place and foreign air carriers with respect to their flights that begin or end at a U.S. airport, allows carriers to apply to the Department of Transportation (DOT or Department) for a waiver from the requirements in the rule if a foreign legal requirement conflicts with a given provision of this rule. A carrier that submits a conflict of law waiver request on or before September 10, 2008, obtains a commitment from DOT not to take enforcement action related to the allegedly conflicting foreign law pending DOT's response to the waiver request.

The rule also permits U.S. and foreign carriers to apply to the Department for a determination on what the final rule calls an ''equivalent alternative.'' A carrier that submits an application for an equivalent alternative determination on or before September 10, 2008, can implement its proposed equivalent alternative unless and until the Department disapproves it. However, a carrier that submits such an application after September 10, 2008, cannot use its proposed equivalent alternative unless and until the Department approves it.

The rule specifies that carriers must send conflict of law waiver requests or applications for equivalent alternative determinations to the Assistant General Counsel for Aviation Enforcement and Proceedings. It provides the following address for paper submissions of such requests/applications: Assistant General Counsel for Aviation Enforcement and Proceedings, C–70, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W96–322, Washington, DC 20590. It does not provide a mechanism for submitting the information electronically. The purpose of this notice is to inform airlines that they have the option of electronically submitting a conflict of law waiver request or an application for an equivalent alternative determination through FDMS as a substitute for paper submission. The Department believes that allowing carriers to submit the requested information through FDMS will make the process more efficient for carriers and will best ensure the timely receipt by the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Aviation Enforcement Office) of the waiver requests and applications for equivalent alternative determinations. It should be noted that the filing of waiver requests or applications by mail is still permitted but this notice provides another mechanism for submitting such requests/applications.

Manner of Submitting a Conflict of Law Waiver Request and an Application for Equivalent Alternative Determination

Has a Public Docket Been Established?

DOT has established an official public docket for conflict of law waiver requests under docket identification (ID) number DOT–OST–2008–0272 and for applications for equivalent alternative determinations under docket identification ID DOT–OST–2008–0273. The official public docket will consist of the waiver requests or applications and other information related to those actions (e.g., approval or denial of requests/applications). Although a part of the official docket, the public docket is not intended to include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing.

How Do I Submit a Conflict of Law Waiver Request or an Application for Equivalent Alternative Determination Through the Electronic Public Docket in FDMS?

You may submit requests/applications electronically through FDMS by taking the following steps:

a. Go directly to *www.regulations.gov* <*http://www.regulations.gov/*> and use the SEARCH DOCUMENTS field to input your docket number. Click the GO >> command to see your search results.

b. Click on the ''Send a Comment or Submission'' link (the yellow speech bubble should be available) after insuring that you have the correct docket. This can be verified by checking the DOCKET ID information.

c. You will now be sent to the PUBLIC COMMENT AND SUBMISSION FORM; here you will fill out submitter information, as well as attach any documents you wish to upload (note: you can have multiple submissions attached, the size limit is 10 megabytes). The only required field on this form is the GENERAL COMMENTS BOX. If uploading attachments you would first click ''browse'' to find the file you wish to attach, then click ''add attachment'' to attach the file to your comment.

d. After uploading any attachments and filling in the form, you will click the ''NEXT STEP'' button to go to the REVIEW COMMENT page; here you can double check the information you provided and verify that everything is correct before going to the final step.

e. Once you have clicked the SUBMIT button, you will be taken to the COMMENT SUBMITTED page, and given a receipt with a COMMENT TRACKING NUMBER. You will want to

write this down or print the page for your records. This information can be used to track your submission.

To ensure proper receipt by the Department, identify the appropriate docket ID number in the subject line on the first page of your request or application.

How Should I Submit Confidential Business Information (CBI) to the Agency?

You should not submit information that you consider to be CBI through the electronic public docket in FDMS. If you wish to take advantage of the opportunity to electronically submit a conflict of law waiver request or an application for an equivalent alternative determination but a portion of your request or application contains CBI, then you should send by mail to the Aviation Enforcement Office the original document containing CBI and submit a second copy of the original document with the CBI redacted in FDMS. The date that you submit the document to FDMS will be considered the receipt date.

The original document that you mail to the Aviation Enforcement Office should clearly indicate which material you believe contains confidential information. You can do this by marking ''confidential'' on each page of the original document that you would like to keep confidential and highlighting or underlining the CBI. You will also need to explain why the information is confidential (as a trade secret, other confidential commercial information, or sensitive security information (SSI)). In your explanation, you should provide enough information to enable the Department to determine whether the information provided is protected by law and must be handled separately. Information not marked as CBI will be included in FDMS without prior notice. Also, if you do not provide an explanation of why the information is confidential you risk the Department including it in the public docket. The Department will also place in the public docket those portions of submissions that a carrier may have redacted but that the agency determines are not trade secrets, other confidential commercial information, or SSI. DOT's policy is that waiver requests or applications for equivalent alternative determinations will be made available for public viewing in DOT's electronic public docket (i.e., FDMS) as DOT receives them and without change, unless the request or application contains copyrighted material, CBI, or other information whose disclosure is restricted by statute.

Dated: September 8, 2008.

Samuel Podberesky,

Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation.

[FR Doc. E8–21204 Filed 9–12–08; 8:45 am]

BILLING CODE 4910–9X–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in October 2008. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective October 1, 2008.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to part 4022).

This amendment (1) adds to Appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during October 2008, (2) adds to Appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during October 2008, and (3) adds to Appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during October 2008.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 6.18 percent for the first 20 years following the valuation date and 5.25 percent thereafter. These interest assumptions represent a decrease (from those in effect for September 2008) of 0.06 percent for the first 20 years following the valuation date and 0.06 percent for all years thereafter.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for September 2008) of 0.25 percent in the immediate annuity rate and are otherwise unchanged. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during October 2008, the PBGC finds that good cause exists for making the assumptions set forth in

this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE–EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 180, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*		*
180	10–1–08	11–1–08	3.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 180, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*		*
180	10–1–08	11–1–08	3.25	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE–EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for October 2008, as set forth below, is added to the table.

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
October 2008	.0618	1–20	.0525	>20	N/A	N/A

Issued in Washington, DC, on this 8th day of September 2008.

Vincent K. Snowbarger,

Deputy Director for Operations, Pension Benefit Guaranty Corporation.

[FR Doc. E8–21415 Filed 9–12–08; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 49

RIN 1219–AB56

Mine Rescue Team Equipment

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: The final rule amends MSHA's existing standards addressing mine rescue team equipment at mine rescue stations serving underground coal and metal and nonmetal mines. It updates the existing standards to reflect advances in mine rescue team equipment technology to increase safety and improve the effectiveness of mine rescue teams.

DATES: This final rule is effective on November 14, 2008.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, at *silvey.patricia@dol.gov* (Internet e-mail), 202–693–9440 (voice), or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

Outline of the Preamble

I. Introduction
II. Statutory and Rulemaking Background
III. Section-By-Section Analysis
A. Subpart A—Mine Rescue Teams for Underground Metal and Nonmetal Mines
B. Subpart B—Mine Rescue Teams for Underground Coal Mines
IV. Regulatory Economic Analysis
A. Executive Order 12866
B. Population at Risk
C. Compliance Costs
D. Benefits
V. Feasibility
A. Technological Feasibility
B. Economic Feasibility
VI. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act
A. Definition of a Small Mine
B. Factual Basis for Certification
VII. Paperwork Reduction Act of 1995
VIII. Other Regulatory Considerations
A. The Unfunded Mandates Reform Act of 1995
B. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families
C. Executive Order 12630: Government Actions and Interference with Constitutionally Protected Property Rights
D. Executive Order 12988: Civil Justice Reform
E. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
F. Executive Order 13132: Federalism
G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

I. Introduction

This final rule updates MSHA's existing mine rescue team equipment standards for teams serving underground metal and nonmetal mines (part 49, subpart A, § 49.6) and underground coal mines (part 49, subpart B, § 49.16). MSHA developed this final rule from existing standards, Agency experience, and comments and testimony during the rulemaking. It is critical that mine rescue team members be provided with the latest in protective equipment so they can safely and effectively carry out their mission. These changes will increase safety and improve the effectiveness of mine rescue teams in responding to mine emergencies.

II. Statutory and Rulemaking Background

In accordance with section 115(e) of the Federal Mine Safety and Health Act of 1977 (Mine Act), MSHA issued standards in 30 CFR part 49 for mine rescue teams at underground coal and metal and nonmetal mines (45 FR 47002; July 11, 1980). On September 6, 2007, MSHA published the proposed rule for Mine Rescue Team Equipment (72 FR 51338) to update mine rescue team equipment standards for underground coal and metal and nonmetal mines. MSHA held four public hearings on October 23, 2007, in Salt Lake City, Utah; on October 25, 2007, in Lexington, Kentucky; on October 30, 2007, in Charleston, West Virginia; and on November 1, 2007, in Birmingham, Alabama. In response to a request from the public, MSHA extended the comment period for the proposed rule from November 9, 2007, to November 16, 2007, to allow additional time for public review of transcripts.

III. Section-by-Section Analysis

On February 8, 2008, MSHA published a final rule for Mine Rescue Teams (73 FR 7636) making certain non-substantive organizational changes to 30 CFR part 49 and designating existing standards for underground metal and nonmetal mines as Subpart A—Mine Rescue Teams for Underground Metal and Nonmetal Mines, and existing standards for underground coal mines as Subpart B—Mine Rescue Teams for Underground Coal Mines.

MSHA requested comment on whether an oxygen resuscitator should be provided for use by mine rescue teams. A commenter stated that it was important to include resuscitators as standard mine rescue equipment and that one of his company's self-contained breathing apparatus (SCBAs) can be used as a resuscitator. However, other commenters emphasized that states have different requirements as to who may administer oxygen and that to use the oxygen resuscitator safely, personnel must have considerable training and retraining. When questioned by the MSHA panel concerning requirements of one particular state, the commenter stated that his state had specific requirements for use of emergency medical service systems and suggested that MSHA review the state's Web site.

Standard mine rescue practice is to have a spare oxygen breathing apparatus available for trapped miners during search and rescue operations. In consideration of the differing state requirements, MSHA has decided not to require oxygen resuscitators in this final rule for these medical devices. Under the final rule, mine rescue teams could use oxygen resuscitators provided they are used in accordance with relevant state requirements and team members are properly trained. The mine operator and mine rescue team should determine whether it is appropriate to use an oxygen resuscitator.

A. Subpart A—Mine Rescue Teams for Underground Metal and Nonmetal Mines

Section 49.6 Equipment and Maintenance Requirements

1. § 49.6(a)(1)

The final rule, like the proposal, requires mine rescue stations to be equipped with 12 self-contained breathing apparatus (SCBAs), each having a 4-hour capacity rather than a 2-hour capacity. It updates the existing rule to reflect current industry practice. The higher capacity SCBAs provide for greater team effectiveness and provide a greater measure of safety and health for miners. The final rule also continues to require that the mine rescue station have any equipment necessary for testing the breathing apparatus and that the apparatus be approved by MSHA and NIOSH under 42 CFR part 84 subpart H. The final rule also contains non-substantive word changes. MSHA received no comments on this proposal.

2. § 49.6(a)(2)

The final rule, like the proposal, requires that mine rescue stations maintain supplies of liquid air, liquid oxygen, pressurized oxygen, or oxygen generating chemicals, and carbon dioxide absorbent chemicals, as applicable to the supplied breathing apparatus and sufficient to sustain each team for 8 hours while using the breathing apparatus during rescue operations. MSHA received no comments on this proposal.

3. § 49.6(a)(3)

The final rule, like the proposal, requires mine rescue stations to be equipped with two extra, fully-charged oxygen bottles for every six SCBAs at the station. MSHA received a comment stating that the existing standard, which required one extra fully-charged oxygen bottle, was adequate. MSHA continues to believe that two extra oxygen bottles for every six SCBAs will assure an additional reserve of a critical safety component for mine rescue teams

during time-sensitive underground rescue or recovery operations.

4. § 49.6(a)(4), (a)(5), and (a)(9)

The final rule, like the proposal, addresses requirements for oxygen pumps, cap lamps, and spare parts and tools for repairing breathing apparatus and communication systems. MSHA received no comments on this proposal.

5. § 49.6(a)(6)

The final rule, like the proposal, requires mine rescue stations to be equipped with four gas detectors appropriate for each gas that may be encountered at the mines served. In addition, like the proposal, detectors must be capable of measuring specific concentrations of methane, oxygen, and carbon dioxide. Like the proposal, the final rule leaves the decision as to the type of detector to be used to the mine operator.

Commenters stated that it was unnecessary to require mine rescue stations serving non-gassy metal and nonmetal mines to have detectors to measure methane. Mine rescue teams serving metal and nonmetal mines generally would need gas detectors capable of measuring oxygen and carbon monoxide.

Underground metal and nonmetal mines classified under § 57.22003 as I–B, I–C, II–B, IV, V–B, and VI are commonly referred to as ''non-gassy'' mines. Existing § 57.22003 provides overall parameters and testing procedures for categorizing underground metal and nonmetal mines. Under the final rule, mine rescue stations that service these mines, with no methane in explosive concentrations, would not need detectors to measure methane.

Underground metal and nonmetal mines classified in accordance with § 57.22003 as I–A, II–A, III, and V–A are capable of producing methane gas in explosive concentrations and are commonly referred to as ''gassy'' mines. Currently, eight underground M/NM mines, classified under § 57.22003 as II–A, III, and V–A, are ''gassy'' mines. There are no active underground M/NM mines currently classified as I–A. Existing regulations in 30 CFR part 57 subpart T for these four categories of M/NM ''gassy'' mines require underground equipment to be approved, examinations for methane to be conducted at specified intervals, and the use of MSHA-approved monitoring or remote sensing devices. Mine rescue stations serving these mines must have detectors that measure methane in the concentration range specified in the final rule.

Some commenters stated that the existing requirement for mine rescue stations to have two detectors per station seemed sufficient. One commenter stated that the reason given in the proposal by MSHA that detectors require time to recharge and be calibrated does not take into account all brands of detectors. The commenter stated that Draëger detectors have replaceable alkaline batteries that could easily last the four hours teams might need to spend underground in rescue and/or recovery activities. However, the typical shift for a mine rescue team during underground search and rescue or recovery operations is eight hours, some of which is under oxygen. Shifts can last beyond eight hours under special circumstances (e.g., availability of transportation, type of work required, and availability of change-out teams). Gas detectors used underground by mine rescue teams are cycled through work shifts. After detectors have been used, they need to be cleaned, recharged, and sometimes recalibrated, so they can be used for the next shift. Mine rescue teams cannot go underground without the required gas-measuring instrumentation and, in time-sensitive emergencies, cannot wait for instruments to be recharged, cleaned, or recalibrated. Having four detectors, two per team, will allow teams to continue their rescue/recovery activities without having to be delayed. This requirement will also provide the team with a backup device underground in the event of an equipment failure.

Like the proposal, the final rule requires that detectors must be able to measure methane concentrations from 0 percent to 100 percent of volume and oxygen from 0 percent to at least 20 percent of volume. In response to comments, the final rule requires that detectors measure carbon monoxide from 0 ppm to at least 9,999 ppm. The proposal required that the detector measure to at least 10,000 ppm. A commenter stated that a multi-gas detector that measures carbon monoxide from 0 ppm to at least 9,999 ppm will soon be available and will be smaller and easier to carry than current versions, and that MSHA should permit this detector to be used. The final rule requires detectors to 9,999 ppm since this is essentially equivalent to 10,000 ppm.

Some commenters stated their preference to continue the longstanding practice of using electronic oxygen and carbon monoxide testers in conjunction with a bellows pump gas tube tester. One commenter asked whether the proposed rule would prohibit the bellows pump detector. Under the proposal, MSHA did not intend to prohibit the bellows pump with gas tube detectors. However, if used, they must be capable of measuring the required gases within the ranges specified in the final rule. MSHA encourages the use of electronic gas detectors. These types of detectors are more accurate than gas tube-type detectors, and are available in the ranges required by the final rule.

6. § 49.6(a)(7) Reserved

The final rule, like the proposal, deletes the existing provision which required mine rescue stations to be provided with two oxygen indicators or flame safety lamps, since this equipment is technologically obsolete. MSHA received no comments on this proposal.

7. § 49.6(a)(8)

The final rule, like the proposal, makes organizational changes to the existing standard on communication systems. MSHA received no comment on this proposal.

8. § 49.6(b)

The final rule, like the proposal, requires that mine rescue team equipment be maintained to ensure readiness for immediate use. The final rule renumbers existing provisions, but makes no substantive changes. MSHA received no comments on this proposal.

B. Subpart B—Mine Rescue Teams for Underground Coal Mines

Section 49.16 Equipment and Maintenance Requirements

1. § 49.16(a)

The final rule, like the proposal, requires mine rescue stations to be equipped with certain equipment. It allows mine rescue stations serving certain underground anthracite coal mines to have the type and amount of equipment that would be appropriate for the number of their mine rescue team members.

As a result of granted petitions for modification, mine rescue teams for underground anthracite coal mines that have no electrical equipment at the face or working section are composed of three members with one alternate to serve both teams. Given these smaller teams, anthracite operators submitted petitions for modification requesting that their mine rescue stations be allowed to maintain eight SCBAs, eight cap lamps, and a charging station, rather than 12 of each as required by existing §§ 49.6(a)(1) and (a)(5). MSHA investigated each petition and made the following finding:

MSHA's investigation found that reducing the quantity of equipment required to be purchased and maintained at the anthracite mine rescue station to a quantity consistent with the requirements of granted modifications currently in effect, which allow anthracite mines to be covered by two mine rescue teams of three members each and an alternate, will provide the same measure of protection to the miners.

On the basis of those investigations, MSHA granted these petitions for modification of existing §§ 49.6(a)(1) and (a)(5). Currently, 11 underground anthracite coal mines operate under this approved alternative method. The reduced number of SCBAs and cap lamps would provide sufficient equipment for teams serving these anthracite coal mines. MSHA received no comments on this proposal.

2. § 49.16(a)(1)

The final rule, like the proposal, requires mine rescue stations to be equipped with 12 SCBAs, each with a minimum 4-hour capacity, rather than a 2-hour capacity. It updates the existing rule to reflect current industry practice. The higher capacity SCBAs provide for greater team effectiveness and provide a greater measure of safety and health for miners. The final rule also continues to require that the mine rescue station have any equipment necessary for testing the breathing apparatus and that the apparatus be approved by MSHA and NIOSH under 42 CFR part 84 subpart H. The final rule also contains non-substantive word changes. MSHA received no comments on this proposal.

3. § 49.16(a)(2)

The final rule, like the proposal, requires that mine rescue stations maintain supplies of liquid air, liquid oxygen, pressurized oxygen, or oxygen generating chemicals, and carbon dioxide absorbent chemicals, as applicable to the supplied breathing apparatus and sufficient to sustain each team for eight hours while using the breathing apparatus during rescue operations. MSHA received no comments on this proposal.

4. § 49.16(a)(3)

The final rule, like the proposal, requires mine rescue stations to be equipped with two extra, fully-charged, oxygen bottles for every six SCBAs at the station. The existing standard required one extra, fully-charged, oxygen bottle for every six SCBAs.

MSHA received a comment stating that the existing standard, which required one extra fully charged oxygen bottle, was adequate. MSHA continues to believe that two extra oxygen bottles for every six SCBAs will assure an additional reserve of a critical safety component for mine rescue teams during time-sensitive underground rescue or recovery operations.

5. §§ 49.16(a)(4), (a)(5), and (a)(9)

The final rule, like the proposal, addresses requirements for oxygen pumps, cap lamps, and spare parts and tools for repairing breathing apparatus and communication systems. MSHA received no comment on this proposal.

6. § 49.16(a)(6)

The final rule, like the proposal, requires mine rescue stations to be equipped with four gas detectors appropriate for each gas that may be encountered at the mines served. In addition, like the proposal, detectors must be capable of measuring specific concentrations of methane, oxygen, and carbon dioxide. Like the proposal, the final rule leaves the decision as to the type of detector to be used to the mine operator.

Some commenters stated that the existing requirement for mine rescue stations to have two detectors per station seemed sufficient. One commenter stated that the reason given in the proposal by MSHA that detectors require time to recharge and be calibrated does not take into account all brands of detectors. The commenter stated Draëger detectors have replaceable alkaline batteries that could easily last the four hours teams might need to spend underground in rescue and/or recovery activities. However, the typical shift for a mine rescue team during underground search and rescue or recovery operations is eight hours, some of which is under oxygen. Shifts can last beyond eight hours under special circumstances (e.g., availability of transportation, type of work required, and availability of change-out teams). Gas detectors used underground by mine rescue teams are cycled through work shifts. After detectors have been used, they need to be cleaned, recharged, and sometimes re-calibrated, so they can be used for the next shift. Mine rescue teams cannot go underground without the required gas-measuring instrumentation and, in time-sensitive emergencies, cannot wait for instruments to be recharged, cleaned, or recalibrated. Having four detectors, two per team, will allow teams to continue their rescue/recovery activities without having to be delayed. This requirement will also provide the team with a backup device underground in the event of an equipment failure.

Like the proposal, the final rule requires that detectors must be able to measure methane concentrations from 0 percent to 100 percent of volume and oxygen from 0 percent to at least 20 percent of volume. In response to comments, the final rule requires that detectors measure carbon monoxide from 0 ppm to at least 9,999 ppm. The proposal required that the detector measure to at least 10,000 ppm. A commenter stated that multi-gas detectors that measure carbon monoxide from 0 ppm to at least 9,999 ppm will soon be available, and will be smaller and easier to carry than current versions, and that MSHA should permit this detector to be used. The final rule requires detectors to 9,999 ppm since this is essentially equivalent to 10,000 ppm.

Some commenters stated their preference to continue the longstanding practice of using electronic oxygen and carbon monoxide testers in conjunction with a bellows pump gas tube tester. One commenter asked whether the proposed rule would prohibit the bellows pump detector. Under the proposal, MSHA did not intend to prohibit the bellows pump with gas tube detectors. However, if these devices are used, they must be capable of measuring the required gases within the ranges specified in the final rule. MSHA encourages the use of electronic gas detectors. These types of detectors are more accurate than gas tube-type detectors, and are available in the ranges required by the final rule.

7. § 49.16(a)(7) Reserved

The final rule, like the proposal, deletes the existing provision that mine rescue stations be provided with two oxygen indicators or flame safety lamps since this equipment is technologically obsolete. MSHA received no comment on this proposal.

8. § 49.16(a)(8)

The final rule, like the proposal, requires that mine rescue team equipment include a communication system. One commenter suggested that MSHA allow handheld permissible radios to satisfy the requirement. In support of this suggestion, the commenter stated that these radios are the best technology, and have been used by the commenter exclusively in mine emergencies and underground training for the past five years. Mine rescue teams may use a wireless communication system or a wired system provided the system is approved under Part 23 of this title.

9. § 49.16(b)

The final rule, like the proposal, requires that mine rescue team equipment be maintained to ensure

readiness for immediate use. MSHA received no comments on this proposal.

IV. Regulatory Economic Analysis

A. Executive Order 12866

Executive Order (E.O.) 12866 (58 FR 51735), as amended by E.O. 13258 (67 FR 9385), requires that regulatory agencies assess both the costs and benefits of regulations. E.O. 12866 classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if, among other things, it has an annual effect on the economy of $100 million or more; creates a serious inconsistency or interferes with an action of another agency; materially alters the budgetary impact of entitlements or the rights of entitlement recipients; or raises novel legal or policy issues. MSHA has determined that the final rule does not have an annual effect of $100 million or more on the economy and that, therefore, it is not an economically ''significant regulatory action'' pursuant to section 3(f) of E.O. 12866. MSHA, however, has concluded that the final rule is ''otherwise significant'' under E.O. 12866 because it raises novel legal or policy issues.

B. Population at Risk

Based on data for 2007, the final rule applies to 613 underground coal mines and 233 underground metal and nonmetal mines with miners working underground. It covers 42,176 coal miners, 15,223 metal and nonmetal miners, and 8,139 coal and metal and nonmetal (non-office) contractors working underground in these mines.

C. Compliance Costs

MSHA estimates that the total yearly cost of the final rule is approximately $812,000. MSHA estimates that the costs are allocated as follows: approximately $452,000 for coal operators, approximately $250,000 for metal and nonmetal operators, and approximately $110,000 for State and local governments. Government-owned mine rescue stations serving underground coal mines include 20 State, one county, and two public colleges. Government-owned mine rescue stations serving underground metal and nonmetal mines include one Federal and 13 State. Some of the mine rescue stations serving underground coal mines also serve underground metal and nonmetal mines.

Final § 49.16(a) requires that mine rescue stations serving underground anthracite coal mines, which have no electrical equipment at the face or working section, have at least the amount of equipment appropriate for the number of mine rescue team members. These anthracite coal mines typically have fewer mine rescue team members. This standard allows mine rescue stations associated with mine rescue teams having a reduced number of members to maintain fewer SCBAs, cap lamps, and charging racks than required under §§ 49.16(a)(1) and (a)(5) for other coal mine rescue stations. Because granted petitions for modification already permit these anthracite coal mines to have equipment appropriate for the number of mine rescue team members, MSHA estimates that, for anthracite mines, there will be no change in costs for this provision.

Final §§ 49.6(a)(1) and 49.16(a)(1) require that mine rescue stations serving underground metal and nonmetal and coal mines be equipped with 12 SCBAs, each with a minimum 4-hour capacity, and associated testing equipment. Because MSHA has determined that all mine rescue stations serving metal and nonmetal and coal mines are already equipped with MSHA and NIOSH approved 4-hour SCBAs and associated testing equipment, the Agency estimates that there are no costs associated with this requirement.

Final §§ 49.6(a)(2) and 49.16(a)(2) require that mine rescue stations serving underground coal and metal and nonmetal mines increase their supply of liquid air, liquid oxygen, pressurized oxygen, or oxygen generating chemicals and carbon dioxide absorbent chemicals from six hours to eight hours for each team. Based on MSHA's knowledge and experience, these supplies are purchased in bulk, and the final rule would only cause mine operators to restock these supplies slightly more frequently. MSHA estimates that the associated cost would be negligible. Under the final rule, mine operators must stock an extra two hours of liquid oxygen, pressurized oxygen, or oxygen generating chemicals and carbon dioxide absorbent chemicals; they do not have to use them in training.

Final §§ 49.6(a)(3) and 49.16(a)(3) require that two additional fully-charged oxygen bottles be provided for every six self-contained breathing apparatus. The existing standard required one extra, fully-charged oxygen bottle for every six self-contained breathing apparatus. To meet the final requirements, MSHA estimates that one additional oxygen bottle will have to be purchased for each mine rescue station. MSHA estimates that the cost for one oxygen bottle is $1,615, to which MSHA has applied an annualization factor of 0.11 to reflect a 7 percent discount rate applied over 15 years. The resulting annualized cost is $178 for each mine rescue station. There are 92 existing mine rescue stations serving underground coal mines and a total of 65 mine rescue stations serving metal and nonmetal mines. In the Agency's final rule for Mine Rescue Teams (73 FR 7635, February 8, 2008), MSHA estimated that the underground coal mining industry will need to create 28 additional stations, for a total of 120 mine rescue stations. MSHA estimates that the yearly cost of this final requirement is $11,570 for mine rescue stations serving underground metal and nonmetal mines, and $21,360 for mine rescue stations serving underground coal mines.

Final §§ 49.6(a)(6) and 49.16(a)(6) require mine rescue stations serving underground metal and nonmetal mines and underground coal mines to have four gas detectors appropriate for each type of gas that may be encountered at the mines served. Gas detectors must measure concentrations of methane from 0.0 percent to 100 percent of volume, oxygen from 0.0 percent to at least 20 percent of volume, and carbon monoxide from 0.0 parts per million to at least 9,999 parts per million. Oxygen is present in all underground metal and nonmetal mines, and carbon monoxide can be found in the vast majority of underground metal and nonmetal mines. Other gases can also be found in underground metal and nonmetal mines. Methane, oxygen, and carbon monoxide and other gases can be found in underground coal mines.

To estimate the incremental costs for gas detectors under this final rule, MSHA compared the cost for gas detectors under the final rule to the baseline cost for gas detectors under the existing rule. Either single-gas or multi-gas detectors may be used under the existing and final rules, but for costing purposes MSHA assumed that multi-gas detectors are being and will be used. In addition, in response to comments, MSHA increased costs from the proposal to cover maintenance and calibration.

Under the existing rule, each mine rescue station is required to have two gas detectors appropriate for each type of gas that may be encountered at the mines served. Mine rescue stations currently have multi-gas detectors that comply with the existing rule, and these detectors would have to be replaced over time. MSHA assumed a replacement cost of $2,000 for each multi-gas detector required under the existing rule. MSHA also assumed that the existing calibration kit for each mine rescue station would not need to be replaced. MSHA estimates that the

essential accessories for a multi-gas detector include a charging module, a battery pack, a protective case, and a remote sampling pump at a cost of $862. The total estimated baseline cost for for a multi-gas detector and essential accessories is $2,862. These baseline costs are subject to an annualization factor of 0.244 to reflect a 7 percent discount rate and a service life of 5 years. MSHA further assumed that replacement of a multi-gas detector and essential accessories under the existing rule would have occurred in approximately three years. Therefore, these baseline costs were discounted by three years using a 7 percent discount rate. The estimated annualized cost for the replacement of a multi-gas detector and essential accessories is $569.

In addition, MSHA estimated a baseline cost of $712 for annual maintenance and calibration for each multi-gas detector. MSHA assumed that annual maintenance and calibration would have continued each following year and, therefore, annual maintenance baseline costs were discounted by one year using a 7 percent discount rate. The discounted baseline cost for annual maintenance and calibration for a multi-gas detector is estimated to be $666.

The total estimated yearly baseline cost to replace a multi-gas detector and essential accessories and to maintain and calibrate the multi-gas detector under the existing rule is $1,235 a year. Because each mine rescue station is required to have two gas detectors under the existing rule, the total baseline cost for two multi-gas detectors is $2,470 for each mine rescue station.

Under the final rule, MSHA estimates that all mine rescue stations will be equipped with four multi-gas detectors appropriate for each type of gas that may be encountered at the mines served. MSHA also estimates that all mine rescue stations will be equipped with essential accessories for each multi-gas detector and that each mine will be equipped with one calibration kit. In response to comments, MSHA increased the cost for each multi-gas detector from $2,000 under the proposal to $3,000 under this final rule. MSHA estimates that the cost of essential accessories for a multi-gas detector is $862 and that a calibration kit costs approximately $268. The estimated cost for four multi-gas detectors, four essential accessories, and one calibration kit is $15,716. These costs are all subject to an annualization factor of 0.244 to reflect a 7 percent discount rate and a service life of 5 years. The annualized cost to purchase the four multi-gas detectors, four essential accessories, and one calibration kit under this final rule is $3,835 for each mine rescue station. In addition, MSHA estimates that the annual maintenance and calibration cost for a multi-gas detector is approximately $712, for a total of $2,848 for four multi-gas detectors. The total estimated yearly cost to purchase four multi-gas detectors, four essential accessories, and a calibration kit, and to maintain and calibrate the four multi-gas detectors is $6,683.

MSHA estimates that the incremental yearly cost of the gas detectors is $4,213 ($6,683 minus the baseline cost of $2,470) for each mine rescue station, and a total of $273,845 for the 65 mine rescue stations serving underground metal and nonmetal mines, and $505,580 for the 120 mine rescue stations serving underground coal mines.

MSHA has not associated any costs with the existing requirements for mine rescue stations to be equipped with either two oxygen indicators or two flame safety lamps, since they reflect obsolete technology. MSHA believes that most mine operators have already replaced flame safety lamps and oxygen indicators with new, more accurate technologically advanced devices.

Table I summarizes the estimated total cost of this rule. In response to comments, MSHA has estimated separate costs for mine rescue stations serving underground coal mines and underground metal and nonmetal mines of $526,920 and $285,415, respectively.

TABLE I—ESTIMATED TOTAL YEARLY COST OF THE FINAL RULE

Mine size	Number of mine rescue stations	Annualized cost per mine rescue station for one oxygen bottle	Annualized incremental cost per mine rescue station for gas detectors under final rule	Total yearly cost
Mine Rescue Stations Serving Underground Coal Mines				
1–19	19	$178	$4,213	$83,429
20–500	71	178	4,213	311,761
501+	13	178	4,213	57,083
Government	17	178	4,213	74,647
Total	120			526,920
Mine Rescue Stations Serving Underground Metal and Non-Metal Mines				
1–19	2	$178	$4,213	$8,782
20–500	50	178	4,213	219,550
501+	5	178	4,213	21,955
Government	8	178	4,213	35,128
Total	65			285,415

D. Benefits

The requirements in this rule will improve and enhance equipment for mine rescue teams who must respond, for rescue and recovery, to an emergency at an underground mine. Mine operators often rely on mine rescue teams to save miners during an underground emergency, such as an explosion, fire, roof fall, or water inundation. Mine rescue team members often put themselves in danger to save miners injured or trapped underground as the result of these events, and to recover miners who can't be rescued. To help them to conduct mine rescue and recovery activities safely and effectively, mine rescue teams must be provided

with up-to-date mine rescue equipment. In an emergency, a properly equipped mine rescue team could mean the difference between life and death.

V. Feasibility

MSHA has concluded that the requirements of the final rule are technologically and economically feasible.

A. Technological Feasibility

This final rule is technologically feasible because all mine rescue team equipment required in this rule is available and in use in many underground mines.

B. Economic Feasibility

Due to a total cost of approximately $812,000 for this rule, MSHA concludes that the rule is economically feasible.

VI. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

In accordance with the Regulatory Flexibility Act (RFA) of 1980 as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA analyzed the impact of the final rule on small entities. Based on that analysis, MSHA notified the Chief Counsel for Advocacy, Small Business Administration (SBA), and made the certification under section 605(b) of the Regulatory Flexibility Act that the final rule does not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is presented below.

A. Definition of a Small Mine

Under the RFA, in analyzing the impact of a rule on small entities, MSHA must use the SBA definition for a small entity or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not taken such an action and, thus, is required to use the SBA definition. The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees.

MSHA has also examined the impacts of this rule on underground coal and metal and nonmetal mines with fewer than 20 employees, which MSHA has traditionally referred to as ''small mines.'' These small mines differ from larger mines not only in the number of employees, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory.

B. Factual Basis for Certification

MSHA initially evaluates the economic impact of a rule on ''small entities'' by comparing the estimated cost of the rule for small entities to their estimated revenue. When the estimated cost is less than one percent of estimated revenue for the size categories considered, MSHA believes it is generally appropriate to conclude that there is not a significant economic impact on a substantial number of small entities. Due to the costs of this final rule, MSHA certifies that it does not have a significant economic impact on a substantial number of small entities.

VII. Paperwork Reduction Act of 1995

The final rule, like the existing rule, requires certification of inspection, testing, and any corrective action taken for breathing apparatus. MSHA estimates that any additional paperwork burden due to the requirements in the final rule is *de minimis* and, therefore, has not included an additional paperwork burden.

VIII. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

MSHA has reviewed the final rule under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). The final rule will not increase private sector expenditures by more than $100 million annually; nor will it significantly or uniquely affect small governments. The final rule may increase expenditures minimally by State, local, or tribal governments, because it requires certain new equipment for mine rescue stations. These changes will not directly affect States or their relationships with the national government; however, some States sponsor or equip mine rescue stations.

B. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

This final rule will have no affect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires no further Agency action, analysis, or assessment.

C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This final rule would not implement a policy with takings implications. Accordingly, E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, requires no further Agency action or analysis.

D. Executive Order 12988: Civil Justice Reform

This final rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. Accordingly, this final rule meets the applicable standards provided in section 3 of E.O. 12988, Civil Justice Reform.

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

This final rule would have no adverse impact on children. Accordingly, E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks, as amended by E.O. 13229 and 13296, requires no further Agency action or analysis.

F. Executive Order 13132: Federalism

Executive Order (E.O.) 13132 requires MSHA to develop an accountable process to ensure a 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 as having ''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.'' The final rule places new equipment requirements on mine operators and States that provide mine rescue stations. These changes will not directly affect States or their relationships with the federal government. Although the final rule does not directly affect States, some States sponsor or equip mine rescue stations.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This final rule would not have ''tribal implications'' because it does not ''have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' Accordingly, E.O. 13175, Consultation and Coordination with Indian Tribal

Governments, requires no further Agency action or analysis.

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

This final rule has been reviewed for its impact on the supply, distribution, and use of energy because it applies to the underground coal mining sector. Insofar as this final rule results in yearly costs of approximately $0.5 million to the underground coal mining industry, relative to annual revenues of $14.1 billion in 2007, it is not a ''significant energy action'' because it will not be ''likely to have a significant adverse effect on the supply, distribution, or use of energy * * * (including a shortfall in supply, price increases, and increased use of foreign supplies).'' Accordingly, E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, requires no further Agency action or analysis.

I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

MSHA has reviewed the final rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. MSHA has determined and certified that the final rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects in 30 CFR Part 49

Coal mines, Emergency equipment and maintenance, Emergency response services, Metal mines, Mine safety and health, Nonmetal mines, Underground mining.

Dated: September 9, 2008.

Richard E. Stickler,

Acting Assistant Secretary for Mine Safety and Health.

■ For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, as amended by the Mine Improvement and New Emergency Response Act of 2006, MSHA is amending chapter I of title 30 of the Code of Federal Regulations as follows:

PART 49—MINE RESCUE TEAMS

■ 1. The authority for part 49 continues to read as follows:

Authority: 30 U.S.C. 811, 825(e), 957.

■ 2. Revise § 49.6 to read as follows:

§ 49.6 Equipment and maintenance requirements.

(a) Each mine rescue station shall be provided with at least the following equipment:

(1) Twelve self-contained breathing apparatus, each with a minimum of 4 hours capacity (approved by MSHA and NIOSH under 42 CFR Part 84, Subpart H), and any necessary equipment for testing such breathing apparatus;

(2) A portable supply of liquid air, liquid oxygen, pressurized oxygen, or oxygen generating chemicals, and carbon dioxide absorbent chemicals, applicable to the supplied breathing apparatus and sufficient to sustain each team for eight hours while using the breathing apparatus during rescue operations.

(3) Two extra, fully-charged oxygen bottles for every six self-contained breathing apparatus;

(4) One oxygen pump or a cascading system, compatible with the supplied breathing apparatus;

(5) Twelve permissible cap lamps and a charging rack;

(6) Four gas detectors appropriate for each type of gas that may be encountered at the mines served. Gas detectors must measure concentrations of methane from 0.0 percent to 100 percent of volume, oxygen from 0.0 percent to at least 20 percent of volume, and carbon monoxide from 0.0 parts per million to at least 9,999 parts per million.

(7) [Reserved].

(8) One portable mine rescue communication system (approved under part 23 of this title) or a sound-powered communication system.

(i) The wires or cable to the communication system shall be of sufficient tensile strength to be used as a manual communication system.

(ii) These communication systems shall be at least 1,000 feet in length.

(9) Necessary spare parts and tools for repairing the breathing apparatus and communication system.

(b) Mine rescue apparatus and equipment shall be maintained in a manner that will ensure readiness for immediate use.

(1) A person trained in the use and care of breathing apparatus shall inspect and test the apparatus at intervals not exceeding 30 days and shall certify by signature and date that the inspections and tests were done.

(2) When the inspection indicates that a corrective action is necessary, the corrective action shall be made and the person shall record the corrective action taken.

(3) The certification and the record of corrective action shall be maintained at the mine rescue station for a period of one year and made available on request to an authorized representative of the Secretary.

■ 3. Revise § 49.16 to read as follows:

§ 49.16 Equipment and maintenance requirements.

(a) Each mine rescue station shall be provided with at least the following equipment. Mine rescue stations serving underground anthracite coal mines, which have no electrical equipment at the face or working section, shall have at least the amount of equipment appropriate for the number of mine rescue team members.

(1) Twelve self-contained breathing apparatus, each with a minimum of 4 hours capacity (approved by MSHA and NIOSH under 42 CFR part 84, subpart H), and any necessary equipment for testing such breathing apparatus.

(2) A portable supply of liquid air, liquid oxygen, pressurized oxygen, or oxygen generating chemicals, and carbon dioxide absorbent chemicals, as applicable to the supplied breathing apparatus and sufficient to sustain each team for 8 hours while using the breathing apparatus during rescue operations.

(3) Two extra, fully-charged oxygen bottles for every six self-contained breathing apparatus.

(4) One oxygen pump or a cascading system, compatible with the supplied breathing apparatus.

(5) Twelve permissible cap lamps and a charging rack.

(6) Four gas detectors appropriate for each type of gas that may be encountered at the mines served. Gas detectors must measure concentrations of methane from 0.0 percent to 100 percent of volume, oxygen from 0.0 percent to at least 20 percent of volume, and carbon monoxide from 0.0 parts per million to at least 9,999 parts per million.

(7) [Reserved].

(8) One portable mine rescue communication system (approved under part 23 of this title) or a sound-powered communication system.

(i) The wires or cable to the communication system shall be of sufficient tensile strength to be used as a manual communication system.

(ii) These communication systems shall be at least 1,000 feet in length.

(9) Necessary spare parts and tools for repairing the breathing apparatus and communication system.

(b) Mine rescue apparatus and equipment shall be maintained in a manner that will ensure readiness for immediate use.

(1) A person trained in the use and care of breathing apparatus shall inspect

and test the apparatus at intervals not exceeding 30 days and shall certify by signature and date that the inspections and tests were done.

(2) When the inspection indicates that a corrective action is necessary, the corrective action shall be made and the person shall record the corrective action taken.

(3) The certification and the record of corrective action shall be maintained at the mine rescue station for a period of 1 year and made available on request to an authorized representative of the Secretary.

[FR Doc. E8–21449 Filed 9–12–08; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AB40

Fire Extinguishers in Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is revising the existing standard for the quantity and location of firefighting equipment in underground coal mines to assure that it is readily available to quickly extinguish a fire. In lieu of the existing requirements for rock dust and other firefighting equipment, this final rule allows the use of portable fire extinguishers in working sections of underground anthracite coal mines that have no electrical equipment at the working section and produce less than 300 tons of coal per shift. The rule also requires an additional fire extinguisher in lieu of rock dust at temporary electrical installations in all underground coal mines.

DATES: This rule is effective October 15, 2008.

SUPPLEMENTARY INFORMATION:

I. Introduction

The existing safety standards are designed to assure that firefighting equipment is readily available to quickly extinguish a fire and prevent its spread. Because of the explosive nature of coal dust and the possible presence of methane gas, there is great potential for a fire to spread to other areas of the underground coal mine. Historical records demonstrate that the consequences of a fire in an underground coal mine can be disastrous.

II. Background

The Bureau of Mines in the U.S. Department of the Interior (Bureau) promulgated and enforced fire protection standards under the Federal Coal Mine Safety Act (30 U.S.C. 451–483). These standards continued in effect under the Federal Coal Mine Health and Safety Act of 1969 (Coal Act) through a transfer provision in the law. On November 20, 1970 (35 FR 17890), the Bureau revised its standards addressing fire protection in underground coal mines. The revised standards continued in effect under the Federal Mine Safety and Health Act of 1977 (Mine Act) through a transfer provision in the Mine Act when the enforcement of mine safety and health was moved from the Department of the Interior to the Department of Labor. The standard addressed in this rule has not changed since that time.

MSHA published a proposed rule (72 FR 72301) on December 20, 2007, to allow the use of an additional fire extinguisher in lieu of rock dust in the working sections of underground anthracite mines. The proposal also would have required the use of an additional fire extinguisher in lieu of rock dust at temporary electrical installations in an underground coal mine. MSHA received no comments on the proposal and, therefore, is publishing the final rule without change.

A. Petition for Modification of a Mandatory Safety Standard

Section 101(c) of the Mine Act allows a mine operator or the representative of miners to petition MSHA for a modification of an existing safety standard. After investigating each petition, MSHA may grant a modification of a safety standard when MSHA determines that—

- The alternative method for achieving the desired result will at all times guarantee no less than the same measure of protection as the existing standard, or
- The application of the existing standard will result in a diminution of safety to miners at that mine.

Underground anthracite coal mine operators have filed petitions for modification to use portable fire extinguishers in lieu of rock dust and other firefighting equipment in the working sections of mines that produce less than 300 tons of coal per shift and use no electrical equipment at the face. Also, many underground coal mine operators have filed petitions for modification to use portable fire extinguishers in lieu of rock dust at temporary electrical installations. This final rule eliminates the need to file a petition to use only portable fire extinguishers at these locations.

B. Rock Dust for Fire Protection

Rock dust is an inorganic, non-combustible dust, such as crushed limestone, that the mine operator spreads on coal surfaces to reduce the chance of stirring up an explosive suspension of coal dust. The rock dust also can work as a fire suppressant by smothering the flame. It is widely used in coal mining to reduce the likelihood of coal dust explosions or flame propagation. A single bag of rock dust weighs about 40 pounds when dry. In damp environments, a bag of rock dust will absorb water, rendering it ineffective for fire prevention or suppression purposes. Damp rock dust becomes somewhat plastic in consistency and dries into a hard, brick-like mass. The presence of bags of rock dust can give a false sense of security for firefighting purposes because the rock dust can absorb water even through a sealed bag. The miner or mine operator can be unaware that the rock dust is useless as a fire suppressant until trying to use it. Bags of rock dust must be protected from moisture, checked frequently, and replaced if wet or hardened. This lifting and moving of heavy bags of rock dust increases the risk of injury to miners.

C. Requirements for Portable Fire Extinguishers

Existing § 75.1100–1(e) sets requirements for a portable fire extinguisher as follows:

> (e) *Portable fire extinguisher:* A portable fire extinguisher shall be either (1) a multipurpose dry chemical type containing a nominal weight of 5 pounds of dry powder and enough expellant to apply the powder or (2) a foam-producing type containing at least 2½ gallons of foam-producing liquids and enough expellant to supply the foam. Only fire extinguishers approved by the Underwriters Laboratories, Inc., or Factory Mutual Research Corp., carrying appropriate labels as to type and purpose, shall be used. After March 30, 1971, all new portable fire extinguishers acquired for use in a coal mine shall have a 2A 10 BC or higher rating.

III. Section-by-Section Analysis

Existing § 75.1100–2 sets requirements for the quantity and location of firefighting equipment in underground coal mines. At working sections, paragraph (a) requires 240 pounds of rock dust (about six bags), two portable fire extinguishers, and a ready supply of water or dry chemical.

At permanent electrical installations, paragraph (e)(1) requires two portable fire extinguishers or one having twice the minimum capacity specified for a portable fire extinguisher in existing § 75.1100–1(e). Rock dust is not required at permanent electrical installations. At temporary electrical installations, however, paragraph (e)(2) requires one portable fire extinguisher and 240 pounds of rock dust.

A. § 75.1100–2(a): Working Sections

Final paragraph § 75.1100–2(a)(3) allows underground anthracite coal mine operators the option to use portable fire extinguishers in lieu of required rock dust, water cars, and other firefighting equipment in working sections.

Existing § 75.1100–2(a) includes different requirements for readily available firefighting equipment in working sections based on the mine's production. Because anthracite coal mines typically produce only 10 to 20 tons of coal per shift, they are covered by existing § 75.1100–2(a)(2), which requires—

(2) Each working section of coal mines producing less than 300 tons of coal per shift shall be provided with two portable fire extinguishers, 240 pounds of rock dust in bags or other suitable containers, and at least 500 gallons of water and at least 3 pails of 10 quart capacity. In lieu of the 500 gallon water supply a waterline with sufficient hose to reach the working places, a portable water car (500 gallons capacity) or a portable all-purpose dry powder chemical car of at least 125-pounds capacity may be provided.

These options, however, do not address or accommodate the typical conditions in the working sections of underground anthracite coal mines. This final rule adds new paragraph § 75.1100–2(a)(3) to provide an option for underground anthracite coal mines that have no electrical equipment at the working section and makes non-substantive format changes to § 75.1100–2(a)(2).

The final rule incorporates the alternative method from granted petitions for modification and further clarifies the mine operator's responsibility regarding the size of fire extinguishers required. The final rule does not apply to underground anthracite coal mines that use electrical equipment at the working section. MSHA believes that the final rule provides needed flexibility and does not reduce protection for miners.

1. Final § 75.1100–2(a)(3) for Underground Anthracite Coal Mines

Final paragraph § 75.1100–2(a)(3) allows underground anthracite operators the option to use portable fire extinguishers. Almost all of these mines still use mining methods to address their unique geological characteristics that were developed over 150 years ago. Anthracite coal is a hard coal found in undulating, steeply pitched veins, and mined with slow, non-mechanized mining methods. In contrast, bituminous coal is softer and generally found in horizontal veins. Bituminous coal production uses highly mechanized methods and depends on electricity for face equipment.

Anthracite mining uses methods and systems that rely on manual labor. Electricity that can cause or contribute to a fire hazard is usually non-existent near the face. Typically, anthracite coal mines operate face equipment using air driven motors for coal drills, air driven fans to supplement face ventilation, and air driven saws and hoists for the cutting and placement of timber.

Mining conditions in underground anthracite coal mines are generally wet and removal of water from the face areas is a major problem. The steep grade permits natural water drainage in open, on-grade ditches from the face area to a slope sump where it is stored and eventually pumped to a suitable water treatment area. Waterlines are seldom installed to the face.

Anthracite coal has a low volatile ratio and the dust does not propagate an explosion. Anthracite coal's ignition temperature is high (925 to 970 degrees Fahrenheit) compared to bituminous coal's ignition temperature (700 to 900 degrees Fahrenheit). Thus, anthracite coal dust is harder to ignite than bituminous coal dust and the risk of a fire is lower in anthracite coal mines than in bituminous coal mines. There has been only one reported fire underground in an anthracite coal mine since implementation of the Mine Act. This fire occurred at a mine that used electrical equipment at the face.

In summary, except for one, underground anthracite coal mines are steeply sloped with little space underground for storage of firefighting equipment; use hand-operated or mechanical equipment, rather than electrical equipment (a potential ignition source), underground at the face where coal is mined; and are wet, causing rock dust to become hard and ineffective for firefighting. Anthracite coal mine dust has low volatility, is difficult to ignite, and does not propagate an explosion.

2. Discussion of Alternative for Underground Anthracite Coal Mines

Because of the uniqueness of the mining methods and conditions in underground anthracite mines, anthracite mine operators have petitioned MSHA to allow the use of only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The mine operators asserted that the alternative method will at all times guarantee no less than the same measure of protection as that afforded by the standard. From 1994 through 2007, MSHA granted 35 petitions for modification of existing § 75.1100–2(a)(2) for underground anthracite coal mines that have no electrical equipment at the working section. MSHA granted the petitions for modification with the following conditions.

1. Fire extinguisher(s) having at least four times the minimum capacity specified for a portable fire extinguisher in 30 CFR 75.1100–1(e) shall be located no greater than 500 feet from the working face.

2. Fire extinguisher(s) having at least six times the minimum capacity specified for a portable fire extinguisher in 30 CFR 75.1100–1(e) shall be located at the entrance to the gangway at the bottom of the slope.

There were no significant adverse comments filed on these petitions. Based on MSHA's experience and investigation of these petitions for modification, MSHA concluded that the use of fire extinguishers in the situations addressed is a safe alternative to existing requirements. The granted alternative method provides for a quick response to any fire on the section and does not reduce protection for miners. In addition, because there are a variety of fire extinguishers currently available, MSHA anticipates no problems in obtaining fire extinguishers.

This final rule incorporates the language from these granted petitions for modification into final paragraph § 75.1100–2(a)(3). In the final rule, the Agency has clarified the mine operator's responsibility regarding the size of fire extinguishers required. The final rule does not apply to the few underground anthracite coal mines that use electrical equipment at the working section. This final rule does not reduce protection for miners.

B. Section 75.1100–2(e): Electrical Installations

Final § 75.1100–2(e) is substantively unchanged from the existing standard and the proposal. Like the proposal, the final rule clarifies the regulatory language and specifies the size and rating of fire extinguishers. The required rating was inadvertently omitted from the proposal, which resulted in the inclusion of foam extinguishers. Consistent with the existing standard and the Agency's intent, the final rule

requires that at each electrical installation, the operator must provide two portable fire extinguishers that have a 2–A:10–B:C or higher rating and a nominal capacity of 5 pounds of dry chemical, or one having at least 10 pounds of dry chemical.

This final rule revises existing § 75.1100–2(e) to eliminate the separate requirements for permanent and temporary electrical installations. It removes the requirement for rock dust at temporary underground electrical installations and requires two portable fire extinguishers, or one having twice the minimum capacity, at all electrical installations. MSHA believes that the final rule offers greater flexibility, provides no less protection to affected miners, and does not result in a diminution of safety to miners.

1. Characteristics of Underground Electrical Installations

The difference between permanent and temporary underground electrical installations can be negligible in regard to their potential fire hazard. For example, MSHA generally considers electrical installations located outby the working section to be permanent and those on the working section to be temporary. However, MSHA considers a battery charging station to be temporary because it moves, even though it is outby the working section. If the electrical installation is in a fire resistant enclosure, then MSHA considers it to be permanent. If not, MSHA considers it temporary. MSHA considers a power center supplying the belt line to be permanent, but one supplying a portable compressor to be temporary. Typically, temporary electrical installations are unattended pumping stations located in remote areas of the mine, battery charging stations, power installation transformers, and section power centers for operating electrical face equipment.

2. Elimination of Separate Requirements for Permanent and Temporary Electrical Installations

Underground coal mine operators petitioned MSHA for modification of § 75.1100–2(e)(2) to allow the use of only portable fire extinguishers at temporary electrical installations. The petitioners asserted that it is difficult to comply with the existing standard in wet and damp environments, such as pumping stations, because the rock dust becomes unusable for firefighting purposes. The petitioners asserted that the exclusive use of portable fire extinguishers as an alternative means of extinguishing fires is at least as effective as the existing standard. They also asserted that portable fire extinguishers may be a safer fire suppressant because lifting the heavy bags of rock dust increases the risk of injury.

From 1994 through 2007, MSHA granted about 42 petitions for modification of § 75.1100–2(e)(2). In granting these petitions, MSHA acknowledged the tendency of rock dust to harden over time and become brick-like when exposed to humidity, which greatly reduces the value of the rock dust as a firefighting tool. MSHA has no evidence of adverse outcomes associated with these granted petitions. Although MSHA did not receive any comments contesting the granted petitions, MSHA received a few comments on the petitions requesting that the Agency require a minimum of two fire extinguishers as an alternative method. Two fire extinguishers may be preferable in some situations to allow two miners to fight the fire simultaneously or to provide a backup should one of the portable fire extinguishers fail.

IV. Executive Order 12866

Executive Order (E.O.) 12866 requires that regulatory agencies assess both the costs and benefits of a significant regulatory action. Under the Executive Order, a ''significant regulatory action'' is one meeting any of the following: Having an annual effect on the economy of $100 million or more; creating a serious inconsistency or interfering with an action of another agency; materially altering the budgetary impact of entitlements or the rights of entitlement recipients; or raising novel legal or policy issues. MSHA has determined that this final rule will not have an annual effect of $100 million or more on the economy and, therefore, it is not an economically ''significant regulatory action'' under section 3(f) of E.O. 12866. MSHA, however, has concluded that the final rule is otherwise significant under E.O. 12866 because it raises novel legal or policy issues.

A. Population-at-Risk

Based on the most recent MSHA data, this final rule applies to 624 underground coal mine operators employing 42,207 miners (excluding office workers). This data includes 16 underground anthracite coal mines of which 15, employing a total of 72 miners, use no electric equipment at the face.

B. Costs

This final rule potentially affects all coal mines that have temporary electrical installations underground and about 15 active underground anthracite coal mines. MSHA experience indicates that a 10- to 20-pound fire extinguisher is the industry standard. In addition, 14 of the 15 active underground anthracite coal mines with no electrical equipment at the face are operating under an alternative method that allows them to use portable fire extinguishers for firefighting. MSHA considers the maintenance of portable fire extinguishers to be a normal business practice for underground coal mines.

MSHA assumes that all mine operators have fire extinguishers meeting the requirements of the final rule and has estimated no cost for the final rule. MSHA estimates that, under the final rule, several mines will not need to file a petition for modification, resulting in a reduction of paperwork and associated costs. However, the Agency estimates that any reductions would be negligible.

C. Benefits

The final rule allows the use of portable fire extinguishers in certain locations in the mine without the need for a mine operator to file a petition for modification. A significant benefit is that rock dust, which is ineffective when damp, can be replaced by a portable fire extinguisher, which is an effective and reliable fire suppressant. In addition, portable fire extinguishers are easier to transport. A mine operator will usually be able to replace a fire extinguisher more quickly than 240 pounds of rock dust. MSHA also anticipates a decreased risk of injury related to lifting and moving heavy bags of rock dust. Based on MSHA injury data between January 1999 and September 2005, 120 injuries or about 17 per year occurred that involved lifting, carrying, or moving rock dust or bags of rock dust.

D. Feasibility

MSHA has concluded that the requirements of the final rule are both technologically and economically feasible. This final rule is technologically feasible because it is not technology-forcing and does not involve activities on the frontiers of scientific knowledge.

V. The Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement Fairness Act (SBREFA)

The Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the

agency certifies that the rule will not have a significant impact on a substantial number of small entities. MSHA analyzed the impact of this final rule. This analysis complies with the legal requirements of the RFA for an analysis of the impacts on ''small entities.'' MSHA certifies that the final rule does not have a significant economic impact on a substantial number of small entities.

Factual Basis for Certification

This final rule will provide at least the same level of protection for miners as the existing standard. It will result in a net cost savings and have no adverse economic impact on the underground coal mining industry.

VI. Paperwork Reduction Act of 1995

Due to this rulemaking, mine operators will no longer have to file a petition for modification of existing § 75.1100–2(a)(2) and (e)(2) to use only fire extinguishers for firefighting purposes. Existing Office of Management and Budget (OMB) paperwork package 1219–0065 includes the annual paperwork burden related to the preparation and filing of petitions with MSHA, including petitions for modification to use fire extinguishers. This final rule will reduce the annual paperwork burden in OMB paperwork package 1219–0065 and MSHA estimates that this reduction will be negligible.

VII. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995 and Executive Order 12875: Enhancing the Intergovernmental Partnership (58 FR 58093)

This final rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments; does not increase private sector expenditures by more than $100 million annually; and does not significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.) requires no further agency action or analysis.

B. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

This final rule does not have an affect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires no further agency action, analysis, or assessment.

C. Executive Order 12630: Government Actions and Interference with Constitutionally Protected Property Rights (53 FR 8859)

This final rule does not implement a policy with ''takings'' implications. Accordingly, Executive Order 12630 requires no further agency action or analysis.

D. Executive Order 12988: Civil Justice Reform (61 FR 4729)

This final rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the federal court system. Accordingly, this final rule meets the applicable standards provided in section 3 of Executive Order 12988.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks (62 FR 19885)

This final rule does not have an adverse impact on children. Accordingly, Executive Order 13045, as amended by Executive Orders 13229 and 13296, requires no further agency action or analysis.

F. Executive Order 13132: Federalism (64 FR 43255)

This final rule does not have ''federalism implications'' because it does not ''have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' Accordingly, Executive Order 13132 requires no further agency action or analysis.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments (63 FR 27655)

This final rule does not have ''tribal implications'' because it does not ''have substantial direct effects on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.'' Accordingly, Executive Order 13175 requires no further agency action or analysis.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355)

This final rule is not a ''significant energy action'' because it is not ''likely to have a significant adverse effect on the supply, distribution, or use of energy (including a shortfall in supply, price increases, and increased use of foreign supplies).'' Accordingly, Executive Order 13211 requires no further agency action or analysis.

I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking (67 FR 53461)

MSHA has thoroughly reviewed this final rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed in section V of this preamble, MSHA has determined and certified that this final rule does not have a significant economic impact on a substantial number of small entities. Accordingly, Executive Order 13272 requires no further agency action or analysis.

VIII. Petitions for Modification

On the effective date of this final rule, all existing granted petitions for modification for the use of fire extinguishers in lieu of rock dust and other firefighting equipment on working sections in underground anthracite coal mines and at temporary electrical installations in underground coal mines under existing § 75.1100–2(a)(2) and (e)(2), respectively, will be revoked. Thereafter, mine operators will be required to comply with the provisions of the final rule.

List of Subjects in 30 CFR Part 75

Coal mines, Fire prevention, Mine safety and health, Safety, Underground mining.

Dated: September 8, 2008.

Richard E. Stickler,

Acting Assistant Secretary for Mine Safety and Health.

■ For the reasons discussed in the preamble, the Mine Safety and Health Administration is amending 30 CFR part 75 as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

■ 1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

■ 2. Amend § 75.1100–2 by revising paragraph (a)(2), adding paragraph (a)(3), and revising paragraph (e) to read as follows:

§ 75.1100–2 Quantity and location of firefighting equipment.

(a) * * *

(2) Each working section of coal mines producing less than 300 tons of

coal per shift shall be provided with the following:

(i) Two portable fire extinguishers; and

(ii) 240 pounds of rock dust in bags or other suitable containers; and

(iii) At least 500 gallons of water and at least three pails of 10-quart capacity; or a waterline with sufficient hose to reach the working places; or a portable water car of at least 500-gallons capacity; or a portable, all-purpose, dry-powder chemical car of at least 125-pounds capacity.

(3) As an alternative to paragraph (a)(2) of this section, each working section with no electrical equipment at the face of an anthracite coal mine producing less than 300 tons of coal per shift shall be provided with the following:

(i) Portable fire extinguishers containing a total capacity of at least 30 pounds of dry chemical or 15 gallons of foam and located at the entrance to the gangway at the bottom of the slope; and

(ii) Portable fire extinguishers containing a total capacity of at least 20 pounds of dry chemical or 10 gallons of foam and located within 500 feet from the working face.

* * * * *

(e) *Electrical installations.* At each electrical installation, the operator shall provide two portable fire extinguishers that have a nominal capacity of 5 pounds of dry chemical, or one extinguisher that has a nominal capacity of at least 10 pounds of dry chemical, and which have a 2–A:10–B:C or higher rating.

* * * * *

[FR Doc. E8–21448 Filed 9–12–08; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 105

[Docket Nos. TSA–2006–24191; USCG–2006–24196]

Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector, Hazardous Materials Endorsement for a Commercial Driver's License

Correction

Document E8-15489 was inadvertently published in the Notices section of Wednesday, July 9, 2008, beginning on page 39323. It should have appeared in the Rules and Regulations section.

[FR Doc. Z8–15489 Filed 9–12–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 105

[Docket Nos. TSA–2006–24191; USCG–2006–24196]

Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector, Hazardous Materials Endorsement for a Commercial Driver's License

Correction

Document E8-10244 was inadvertently published in the Notices section of Wednesday, May 7, 2008, beginning on page 25757. It should have appeared in the Rules and Regulations section.

[FR Doc. Z8–10244 Filed 9–12–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0837]

RIN 1625–AA00

Safety Zone; Agat Bay and Outer Apra Harbor, GU

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the waters of Agat Bay and Outer Apra Harbor, Guam. The zone will encompass two distinct areas, each area bounded by a circle with a 300-meter radius on the surface and a 2750-meter radius underwater, centered at 13°23′00″ N and 144°35′00″ E (NAD 1983) and 13°27′42″ N and 144°38′30″ E (NAD 1983) respectively. This safety zone is necessary to protect mariners who would otherwise transit or be within the affected area from possible safety hazards associated with an underwater detonation operation. Entry of persons or vessels into this temporary safety zone is prohibited unless authorized by the Captain of the Port.

DATES: This rule is effective beginning September 15, 2008, through September 17, 2008, daily between the hours of 8 a.m. and 11:59 p.m.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0837 and are available online at *www.regulations.gov.* They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the U.S. Coast Guard Sector Guam, Naval Base Guam, between 7:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, contact Lieutenant Krissy Marlin, U.S. Coast Guard Sector Guam, at (671) 355–4835. If you have questions on viewing the docket, call Renne V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0837), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, and e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or

envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time. Enter the docket number for this rulemaking (USCG–2008–0837) in the Search box, and click ''Go >>.'' You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the Coast Guard Sector Guam, Naval Base Guam, between 7:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

Background and Purpose

The Coast Guard expects that, on September 15th, 16th and 17th 2008, the U.S. Navy will conduct an underwater detonation of explosives operation within the Guam Captain of the Port Zone. The Coast Guard has determined that a temporary safety zone, that will encompass two distinct areas in the waters of Agat Bay and outer Apra Harbor, is necessary to protect mariners and divers from hazards associated with the operation. The areas are relatively close together, and both are areas where underwater demolition exercises will occur.

Discussion of Rule

This temporary safety zone is effective daily between the hours of 8 a.m. to 11:59 p.m. beginning September 15, 2008, through September 17, 2008. The zone is located within the Guam Captain of the Port Zone (See 33 CFR 3.70–15) and covers all waters bounded by a circle with a 300-meter radius on the surface and a 2750-meter radius underwater, centered at 13°23′00″ N and 144°35′00″ E in Agat Bay and 13°27′42″ N and 144°38′30″ E in outer Apra Harbor, from the surface of the water to the ocean floor.

The general regulations governing safety zones contained in 33 CFR 165.23 apply. Entry into, transit through or anchoring within this zone is prohibited unless authorized by the Captain of the Port or a designated representative thereof. Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce the zone. The Captain of the Port may waive any of the requirements of this rule for any person, vessel, or class of vessel upon finding that application of the safety zone is unnecessary or impractical for the purpose of maritime safety. Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the short duration of the zone and the limited geographic area affected by it.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. We expect that there will be little or no impact to small entities due to the narrowly tailored scope of this safety zone.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded under the Instruction that there are no factors in this case that limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, under figure 2–1, paragraph (34)(g) of the Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because it is a regulation establishing a safety zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T14–173 to read as follows:

§ 165.T14–173 Safety Zone; Agat Bay and adjacent waters, GU.

(a) *Location.* The following areas, within the Guam Captain of the Port Zone (See 33 CFR 3.70–15), from the surface of the water to the ocean floor, are a safety zone:

(1) All waters bounded by a circle with a 300-meter radius on the surface and a 2750-meter radius underwater, centered at 13°23′42″ N and 144°35′00″ E (NAD 1983);

(2) All waters bounded by a circle with a 300-meter radius on the surface and a 2750-meter radius underwater, centered at 13°27′42″ N and 144°38′30″ E.

(b) *Effective Dates.* This rule is effective beginning September 15, 2008, through September 17, 2008, daily between the hours of 8 a.m. and 11:59 p.m.

(c) *Enforcement Period.* This rule will be enforced from 8 a.m. through 11:59 p.m., each day, from September 15, 2008, through September 17, 2008.

(d) *Regulations.* The general regulations governing safety zones contained in 33 CFR 165.23 apply. Entry into, transit through or anchoring within this zone is prohibited unless authorized by the Captain of the Port or a designated representative thereof.

(e) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce this temporary safety zone.

(f) *Waiver.* The Captain of the Port may waive any of the requirements of this rule for any person, vessel, or class of vessel upon finding that application of the safety zone is unnecessary or impractical for the purpose of maritime security.

Dated: September 3, 2008.

T. Sparks,

Captain, U.S. Coast Guard, Captain of the Port Guam.

[FR Doc. E8–21549 Filed 9–11–08; 4:15 pm]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2005–MD–0013; FRL–8714–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Amendments to the Control of Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Maryland Department of the Environment (MDE). This revision pertains to amendments to the regulations for the control of incinerators. This action is being taken under the Clean Air Act (CAA or the Act).

DATES: *Effective Date:* This final rule is effective on October 15, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2005–MD–0013. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 31, 2006 (70 FR 5033), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of the amendments to regulations .01 and .05 under COMAR 26.11.08 Control of Incinerators. The formal SIP revision was submitted by the MDE on October 31, 2005 (#05–06). Other specific requirements of the SIP revision and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. On March 2, 2006, EPA received an adverse comment on its January 31, 2006 NPR. A summary of the comment submitted and EPA's response is provided in Section II of this document.

II. Summary of Public Comments and EPA Responses

Comment: A commenter submitted test results from the following pollutants: visible emissions, particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide, hydrogen chloride, metals (cadmium, mercury, and lead), dioxins, and furans concerning human and animal crematories. The test results show that the emissions of nearly all the tested pollutants increased when the operating temperature was raised. From the test results, the commenter indicates that there is no benefit to the higher operating temperatures required in many states. The commenter indicates that the test results also demonstrate that crematories are capable of low emissions without the use of additional control equipment.

Response: This rulemaking is limited to the amendments of .01 and .05 under COMAR 26.11.08 Control of Incinerators. These amendments define the term ''crematory'' and clarify that crematories are subject to the 0.1 grain loading particulate matter requirement. This rulemaking does not address visible emissions or emissions of carbon monoxide, nitrogen oxides, sulfur dioxide, hydrogen chloride, metals, dioxins, and furans. Comments regarding emissions of these pollutants are not relevant to this rulemaking. EPA is required to respond only to comments relevant to the rulemaking. *See,* e.g., *Whitman* v. *American Trucking Ass'n.,* 531 U.S. 457, 471 (2001). To the extent that the comment addresses a pollutant relevant to this rulemaking, such as particulate matter, the commenter appears to be challenging the State's decision to regulate crematories in the particular manner it has chosen. The CAA is based upon ''cooperative federalism,'' which contemplates that each State will develop its own SIP, and that States retain a large degree of flexibility in choosing which sources to control and to what degree. EPA must approve a State's plan if it meets the minimum requirements of the CAA. *Union Electric Co.* v. *EPA,* 427 U.S. 246, 264–266 (1976). The comment therefore presents no basis for EPA disapproving the proposed SIP revision.

III. Final Action

EPA is approving Maryland's SIP revision submitted on October 31, 2005. The SIP revision clarifies that crematories are subject to the particulate matter requirements of COMAR 26.11.08 by amending the definitions in section .01 and the emissions requirements in section .05.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 14, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving a Maryland SIP revision that amends COMAR 26.11.08 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 29, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

■ 2. In (52.1070, the table in paragraph (c) is amended by revising the entries for COMAR 10.18.08.01 and 10.18.08.05 to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR § 52.1100
*	*	*	*	*
COMAR 10.18.08/26.11.08	Control of Incinerators			
10.18.08/26.11.08.01	Definitions	9/12/05	9/15/08 [Insert page number where the document begins].	Definition of "crematory" is added.
*	*	*	*	*
10.18.08/26.11.08.05	Particulate Matter	9/12/05	9/15/08 [Insert page number where the document begins].	Sections .05A(3) and .05B(2)(a) are revised.
*	*	*	*	*

* * * * *

[FR Doc. E8–21310 Filed 9–12–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0333; FRL–8714–4]

Approval and Promulgation of Air Quality Implementation Plans; Virginia, Reasonably Available Control Technology (RACT) for Norfolk Southern Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia removing a nitrogen oxide (NO_X) reasonably available control technology (RACT) permit from the Virginia SIP for sources located at the Norfolk Southern Railway Company—East End Shops' facility located in Roanoke, Virginia, which have permanently shut down. This action is being taken under the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on October 15, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2008–0333. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814–2034, or by e-mail at *wentworth.ellen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On May 27, 2008 (73 FR 30340), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of the removal of a NO_X RACT permit from the Virginia SIP for sources located at the Norfolk Southern Railway Company—East End Shops' facility, in Roanoke, Virginia which have permanently shut down. The formal SIP revision was submitted by the Virginia Department of Environmental Quality (VADEQ) on February 11, 2008.

II. Summary of SIP Revision

On February 11, 2008, the Commonwealth of Virginia submitted a revision to its SIP which requested the removal of NO_X RACT permit No. 20468, issued to the Norfolk Southern Railway Company—East End Shops' facility in Roanoke, Virginia, from the Virginia SIP. Since the time of EPA's approval of the NO_X RACT requirements for NO_X RACT-subject sources at this facility (70 FR 21621, April 27, 2005), many sources, including those that had previously been subject to the NO_X RACT requirements of 9 VAC 5–40 via permit No. 20468, were permanently shut down. As a result, the VADEQ requested that EPA remove NO_X RACT permit No. 20468 from the Virginia SIP since it was no longer applicable. The SIP revision consisted of mutual shut down agreements between the VADEQ and the Norfolk Southern Railway Company—

East End Shops' facility located in Roanoke, Virginia. The volatile organic compound (VOC) and NO_X RACT control regulations of Chapter 40 had originally become applicable in the Roanoke area because of its participation in the EPA Early Action Compact (EAC) program for the Western Virginia Emissions Control Area.

The sources previously subject to the NO_X RACT requirements of permit No. 20468 which have permanently shut down include the following units: Unit ID #8–01, B & W Stirling coal-fired spreader stoker boiler; Unit ID #8–02, B & W Stirling coal-fired spreader stoker boiler; Unit ID #8–03, B & W Stirling coal-fired spreader stoker boiler; Unit ID #8–04, Zurn Energy coal-fired spreader stoker boiler; Unit ID #43–03, 15 open-front oil-fired metal heating furnaces; and Unit ID #51–13/14, one 13-ton capacity electric arc furnace.

Other specific requirements of the removal of the NO_X RACT permit for Norfolk Southern Railway Company—East End Shops' facility, and the rationale for EPA's action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virgina

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must (enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *'' The opinion concludes that ''[r]egarding (10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.'' Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving the Commonwealth of Virginia's SIP revision, submitted on February 11, 2008, requesting the removal of NO_X RACT permit No. 20468, issued on December 22, 2004, to the Norfolk Southern Railway Company—East End Shops' facility, in Roanoke, Virginia from the Virginia SIP. EPA is taking this final action because the sources that were previously subject to the NO_X RACT requirements of this permit, have permanently shut down. EPA is approving this action with the understanding that no future operation of this equipment shall occur until the owner has obtained the applicable permits pursuant to 9 VAC 5 Chapter 80 of Virginia's regulations. Upon EPA's approval of the Commonwealth's request, the VADEQ will notify the Norfolk Southern Corporation of EPA's approval and the permit repeal will become effective 30 days later.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 14, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, pertaining to the removal of the Norfolk Southern Railway Company—East End Shops' NO_X RACT permit, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 29, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart VV—Virginia

§ 52.2420 [Amended]

■ 2. In § 52.2420, the table in paragraph (d) is amended by removing the entry for Norfolk Southern Railway Company—East End Shops.

[FR Doc. E8–21309 Filed 9–12–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2008–0593–200818a; FRL–8714–7]

Approval and Promulgation of Implementation Plans Alabama: Volatile Organic Compounds and Open Burning

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Alabama State Implementation Plan (SIP), submitted by the Alabama Department of Environmental Management (ADEM) on January 8, 2008. The revisions include modifications to Alabama's Volatile Organic Compounds (VOC) and Control of Open Burning and Incineration regulations, found at Alabama Administrative Code (AAC) Chapters 335–3–1, and 335–3–3, respectively. This action is being taken pursuant to section 110 of the Clean Air Act (CAA).

This SIP revision also contains a letter addressing the requirements of section 110(a)(2)(D)(i), which EPA will consider separately.

DATES: This direct final rule is effective November 14, 2008 without further notice, unless EPA receives adverse comment by October 15, 2008. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. ''EPA–R04–OAR–2008–0593,'' by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: harder.stacy@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* ''EPA–R04–OAR–2008–0593,'' 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. Stacy Harder, 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. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2008–0593,'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you

submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the 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 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Stacy Harder, 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. The telephone number is (404) 562–9042. Ms. Harder can also be reached via electronic mail at *harder.stacy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Today's Action
II. What Is the Background for This Action?
III. Final Action
IV. Statutory and Executive Order Reviews

I. Today's Action

On January 8, 2008, ADEM submitted proposed SIP revisions to EPA for review and approval into the Alabama SIP. The revisions include changes made by the State of Alabama to AAC Chapters 335–3–1 and 335–3–3. The rules became state effective on January 22, 2008. EPA is now taking direct final action to approve the revisions, which include revising the definition of VOC, and updating an open burning regulation. These revisions are part of the State's strategy to meet the national ambient air quality standards (NAAQS) by reducing emissions of VOCs.

The revision to Chapter 335–3–1-.02(gggg), submitted by ADEM, added one compound to the list of those excluded from the definition of VOC, on the basis that this compound makes a negligible contribution to ozone formation. This revision modified the definition to say that: 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (also known as HFE–7300 or L–14787 or $C_2F_5CF(OCH_3)CF(CF_3)_2$), will be considered to be negligibly reactive.

Additionally, ADEM is revising the Open Burning regulation found at Chapter 335–3–3.01(2)(e), to delete an outdated provision which applied only in 2006. The revisions summarized above are approvable pursuant to section 110 of the CAA.

II. What Is the Background for This Action?

Revisions to Chapter 335–3–1

Tropospheric ozone, commonly known as smog, occurs when VOC and nitrogen oxides (NO_X) react in the atmosphere. Because of the harmful health effects of ozone, EPA limits the amount of VOC and NO_X that can be released into the atmosphere. VOC are those compounds of carbon (excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate) which form ozone through atmospheric photochemical reactions. Compounds of carbon (or organic compounds) have different levels of reactivity; they do not react at the same speed, or do not form ozone to the same extent.

It has been EPA's policy that compounds of carbon with a negligible level of reactivity need not be regulated to reduce ozone (see, 42 FR 35314, July 8, 1977). EPA determines whether a given carbon compound has ''negligible'' reactivity by comparing the compound's reactivity to the reactivity of ethane. EPA lists these compounds in its regulations at 40 CFR 51.100(s), and excludes them from the definition of VOC. The chemicals on this list are often called ''negligibly reactive.'' EPA may periodically revise the list of negligibly reactive compounds to add compounds to or delete them from the list.

EPA finalized such a rule on January 18, 2007 (72 FR 2193), approving the addition of 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane to the list of those compounds excluded from the definition of VOC. ADEM is updating the State regulation to be consistent with federal regulations.

Revisions to Chapter 335–3–3

The ''Open Burning'' regulation in Chapter 3 is being revised to delete Rule 335–3–3–.01(2)(e). As currently written, subparagraph 2(e) allows open burning in the counties of DeKalb, Etowah, Russell, and Talladega during the months of May, June, July, August, September, and October, during 2006 only, provided that an air curtain incinerator is used during burning. Alabama is updating the SIP to remove this rule, as it applied to the 2006 calendar year only.

III. Final Action

EPA is approving revisions to the Alabama SIP submitted on January 8, 2008. The SIP revision includes changes to the VOC regulations which are part of the State's strategy to meet the NAAQS. The action amends Rules 335–3–1–.02(gggg) to update the definition of VOC to be consistent with EPA regulations, and deletes an outdated open burning provision in rule 335–3–3–.01(2)(e). These changes are consistent with the CAA.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective November 14, 2008 without further notice unless the Agency receives adverse comments by October 15, 2008.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 14, 2008 and no further action will be taken on the proposed rule. Please note that if EPA receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions

of the rule that are not the subject of an adverse comment.

IV. 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 action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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 it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 14, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See, section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 4, 2008.

Russell L. Wright, Jr.,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart B—Alabama

■ 2. Section 52.50(c) is amended by revising entries for ''Sections 335–3–1–.02 and 335–3–3–.01'' to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED ALABAMA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Chapter 335–3–1			General Provisions	
*	*	*	*	*
Section 335–3–1–.02	Definitions	01/22/08	09/15/08 [Insert citation of publication].	
*	*	*	*	*
Chapter 335–3–3			Control of Open Burning and Incineration	
Section 335–3–3–.01	Open Burning		09/15/08 [Insert citation of publication].	
*	*	*	*	*

* * * * *

[FR Doc. E8–21312 Filed 9–12–08; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2008–0614; FRL–8713–8]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Missouri State Implementation Plan (SIP) and Operating Permits Program. EPA is approving a revision to the Missouri rule entitled ''Submission of Emission Data, Emission Fees, and Process Information.'' These revisions will establish emission fees for the Missouri facilities as required annually, align state rule reporting requirements with the Federal Consolidated Emission Reporting Rule (CERR), and decrease the required Emissions Inventory Questionnaire (EIQ) reporting frequency for affected installations.

DATES: This direct final rule will be effective November 14, 2008, without further notice, unless EPA receives adverse comment by October 15, 2008. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2008–0614, by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *E-mail: algoe-eakin.amy@epa.gov.*
3. *Mail or Hand Delivery:* Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2008–0614. 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.

Docket: All documents in the 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, 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 Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Amy Algoe-Eakin at (913) 551–7942, or by e-mail at *algoe-eakin.amy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is the Part 70 Operating Permits Program?
What is the Federal approval process for an Operating Permits Program?
What is being addressed in this document?
Have the requirements for approval of a SIP revision and a Part 70 revision been met?
What action is EPA taking?

What is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What is the Federal approval process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have

approved a given state regulation with a specific effective date.

What does Federal approval of a state regulation mean to me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What is the Part 70 Operating Permits Program?

The CAA Amendments of 1990 require all states to develop operating permits programs that meet certain Federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or PM_{10}; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

Revisions to the state operating permits program are also subject to public notice, comment, and our approval.

What is the Federal approval process for an Operating Permits Program?

In order for state regulations to be incorporated into the Federally-enforceable Title V operating permits program, states must formally adopt regulations consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the approved operating permits program. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 502 of the CAA are incorporated into the Federally-approved operating permits program. Records of such actions are maintained in the CFR at Title 40, part 70, appendix A, entitled ''Approval Status of State and Local Operating Permits Programs.''

What is being addressed in this document?

Missouri, in its letter of December 21, 2007, requested that EPA approve a revision to the SIP and Title V operating permits program to include revisions to rule 10 CSR 10–6.110, ''Submission of Emission Data, Emission Fees, and Process Information.'' This rule deals with submittal of emissions information, emission fees, and public availability of emissions data. It provides procedures for collection, recording, and submittal of emissions data and process information on state-supplied Emission Inventory Questionnaire (EIQ) forms and Emission Statement forms so that the state can calculate emissions for the purpose of state air resource planning. In addition, these forms provide a basis for the assessment of emissions fees for the Title V operating permit program. The revisions were made to align state reporting requirements with the Federal Consolidated Emissions Reporting Rule (CERR), to update references in the rule, and to decrease the required EIQ reporting frequency for affected installations. Revisions to 10 CSR 10–6.110 are described in the following paragraphs.

Subsection (1)(A), and paragraphs (3)(A)2, (3)(A)3, and (3)(A)4 were revised to renumber the reference to the Reporting Frequency table from (3)(A)5 to (3)(A)6. This is an administrative amendment which does not change any substantive provisions in the rule.

Subsection (1)(B) was revised to align state reporting requirements with the Federal CERR. These changes are consistent with and, in some cases, more stringent than the CERR. This rule was revised to clarify that annual reporting of volatile organic compounds, nitrous oxides and carbon monoxide is required in nonattainment areas. A provision was added that indicates any changes to the annual emissions statement form will be presented to the regulated community for a forty-five day public comment period.

Section (2) identifies definitions and added subsections (2)(A), (2)(B), (2)(C), and (2)(D) to include Peak Ozone Season, CERR, Reporting Year, and a reference for other terms as specified in 10 CSR 10–6.020.

Paragraph (3)(A)3 was revised to change the due date of EIQ forms from ninety (90) days after the end of the reporting period, to June 1 of each year, and to delete a redundant sentence.

Paragraph (3)(A)4 was revised to align state reporting requirements with the Federal CERR by clarifying reporting thresholds for ozone nonattainment areas and to add the word ''pollutant.'' These changes are consistent with and, in some cases, more stringent than the CERR.

Paragraphs (3)(A)6 and (3)(A)5 were renumbered. The Reporting Frequency table under the newly renumbered paragraph (3)(A)6 was modified to add separate reporting frequency requirements (every three years rather than annually) for installations required to obtain a Basic State Operating Permit under 10 CSR 10–6.065. Under Missouri's rules, ''basic'' sources are small sources to which EPA's reporting rules do not apply. Paragraphs within the reporting frequency table were renumbered. For sources smaller than basic sources, the reporting frequency was changed from five to six years. These latter sources are also not covered by EPA's reporting rules.

Finally, paragraph 5 of the table was revised to clarify that sources of ozone precursors and carbon monoxide, in ozone nonattainment areas, must file annual reports if they emit 10 or more tons of any of these (non-major) pollutants during a peak ozone season.

By state statute, the emission fees are set annually to fund the reasonable cost of administering the program. Missouri continually evaluates the operating permits program financial situation. Revisions to subsection (3)(D) address changes to the Missouri operating permits program.

Paragraph (3)(D)1 was revised to increase the emissions fee from thirty four dollars and fifty cents ($34.50) per ton of regulated air pollutant to forty dollars and no cents ($40.00), to change the calendar year from 2006 to 2007,

and to update reporting criteria requirements.

Paragraph (3)(D)2.D was revised to update and make corrections for the air pollutants for which the fees are not assessed. The revision provided a typographical revision by substituting carbon monoxide for carbon oxide, and also added ammonia and ''$PM_{2.5}$ particulate matter'' emissions.

Paragraph (3)(D)2.F replaced the phrase ''each year'' with ''annually'' and added a reference to paragraph (3)(A)6 for required reporting schedules.

The rule revisions do not change the stringency of the SIP or Title V program and the revisions otherwise meet the EPA requirements for both programs.

Have the requirements for approval of a SIP revision and a Part 70 revision been met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this docket, these revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations. These revisions are minor clarifications, updates, and corrections which do not affect the stringency of existing requirements. These revisions are also consistent with applicable EPA requirements in Title V of the CAA and 40 CFR part 70.

What action is EPA taking?

We are approving revisions to the Missouri SIP and incorporating the revised rule 10 CSR 10–6.110, ''Submission of Emissions Data, Emission Fees, and Process Information.''

We are also approving revisions to subsection 3(D)1, and paragraphs 3(D)2.D and 3(D)2.F of this rule as program revisions to the state's Part 70 Operating Permits Program.

We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 14, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

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.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating

permits, Reporting and recordkeeping requirements.

Dated: September 4, 2008.

John B. Askew,

Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

■ 2. In § 52.1320 the table in paragraph (c) is amended by revising the entry for 10–6.110 to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.110	Submission of Emission Data, Emission Fees, and Process Information.	12/30/07	09/15/08 [*insert FR page number where the document begins*].	Section (3)(D), Emissions Fees, has not been approved as part of the SIP.
*	*	*	*	*

* * * * *

PART 70—[AMENDED]

■ 3. The authority citation for part 70 continues to read as follows:

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

Appendix A—[Amended]

■ 4. Appendix A to part 70 is amended by adding paragraph (v) under Missouri to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Missouri

* * * * *

(v) The Missouri Department of Natural Resources submitted revisions to Missouri rule 10 CSR 10–6.110, ''Submission of Emission Data, Emission Fees, and Process Information'' on December 21, 2007; approval of section (3)(D) effective November 14, 2008.

* * * * *

[FR Doc. E8–21181 Filed 9–12–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2007–93; FRL–8716–2]

Withdrawal of Federal Antidegradation Policy for All Waters of the United States Within the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to withdraw the federal antidegradation policy for all waters of the United States within the Commonwealth of Pennsylvania. We are withdrawing the federal antidegradation policy to allow Pennsylvania to implement its own antidegradation policy. Pennsylvania has adequately demonstrated that its antidegradation policy protects all waters of the United States at a level consistent with the federal requirements under the Clean Water Act. Therefore, the federal antidegradation policy is redundant.

DATES: This rule is effective December 15, 2008 without further notice unless EPA receives adverse comment by October 15, 2008. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket Id. No. EPA–HQ–OW–2007–0093, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ow-docket@epa.gov.*
- *Mail:* Water Docket, USEPA, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, EPA West Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2007–93. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web

site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OW Docket Center. This Docket Facility is open from 8:30 a.m. until 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–2426 and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Caroline Whitehead at EPA Headquarters, Office of Water (4305T), 1200 Pennsylvania Ave, NW., Washington, DC 20460 (*telephone:* 202–566–2907, *fax:* 202–566–0409 or *e-mail: whitehead.caroline@epa.gov*) or Denise Hakowski at EPA Region 3 (3WP30), 1650 Arch Street, Philadelphia, Pennsylvania 19103 (*telephone:* 215–814–5726, *fax:* 215–814–2318 or *e-mail: hakowski.denise@epa.gov*).

SUPPLEMENTARY INFORMATION: This section is organized as follows:

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I. Potentially Affected Entities

Citizens concerned with water quality in Pennsylvania may be interested in this rulemaking. Entities discharging pollutants to the surface waters of Pennsylvania could be indirectly affected by this rulemaking since water quality standards are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. Because this action withdraws a redundant federal antidegradation policy, the effect of this rulemaking should be insignificant. Categories and entities which may ultimately be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to surface waters in Pennsylvania.
Municipalities	Publicly-owned treatment works discharging pollutants to surface waters in Pennsylvania.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding NPDES-regulated entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action.

II. Background

Section 303 (33 U.S.C. 1313) of the Clean Water Act (CWA or Act) directs States, with oversight by EPA, to adopt water quality standards to protect the public health and welfare, enhance the quality of water and serve the purposes of the CWA. Under section 303, States are required to develop water quality standards for navigable waters of the United States within the State. Section 303(c) and EPA's implementing regulations at 40 CFR part 131 require State and Tribal water quality standards to include the designated use or uses to be made of the water, the water quality criteria necessary to protect those uses, and an antidegradation policy. States are required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. The results of this triennial review must be submitted to EPA, and EPA must approve or disapprove any new or revised standards. Section 303(c) of the CWA authorizes the EPA Administrator to promulgate water quality standards to supersede State standards that EPA has disapproved or in any case where the Administrator determines that a new or revised standard is needed to meet the CWA's requirements.

In June 1994, EPA disapproved Pennsylvania's antidegradation regulation after determining the regulation was not consistent with the federal antidegradation regulation found at 40 CFR 131.12. When the Pennsylvania Department of Environmental Protection (PADEP) did not act within the statutory timeframe to address EPA's findings, EPA promulgated a federal antidegradation policy for all waters of the United States within the Commonwealth of Pennsylvania at 40 CFR 131.32 on December 9, 1996. In August 1999, PADEP submitted revisions to its antidegradation policy found in 25 Pa. Code Chapter 93 to EPA. On March 17, 2000, EPA approved most of the revisions to Pennsylvania's regulations as meeting the requirements of federal regulations at 40 CFR 131.12(a)(1) and 131.12(a)(2), but withheld action on Section 93.4b, PADEP's Exceptional Value (EV) Waters designation, or Tier 3, until PADEP ensured that EV designated waters would be protected at the level consistent with federal regulations at 40 CFR 131.12(a)(3). In 2003, PADEP published ''Water Quality Antidegradation Implementation Guidance'' (Document Number 391–0300–002). In it, PADEP provides

guidance to its staff and information to help the regulated community and the public understand the implementation of the antidegradation policy in Pennsylvania. Based on a review of the document in combination with the PADEP's antidegradation regulation, EPA approved PADEP's antidegradation policy for Tier 3 waters on March 7, 2007. Because Pennsylvania now has an EPA-approved antidegradation policy meeting the federal requirements at 40 CFR 131.12, the federal antidegradation regulation promulgated by EPA for Pennsylvania is no longer needed and EPA is withdrawing it with this action.

III. Why Is EPA Using a Direct Final Rule?

EPA is publishing this final rule without a prior proposed rule because we view this rulemaking as a noncontroversial action and anticipate no adverse comment. This action withdraws the federally promulgated antidegradation rule because Pennsylvania has developed regulations that protect the waters of the United States within the Commonwealth at a level consistent with the federal requirements. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as a proposed rule to withdraw the federal antidegradation regulation for Pennsylvania if any adverse comment is received regarding this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment on this direct final rule, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

IV. Statutory and Executive Order Review

A. Executive Order 12866 (Regulatory Planning and Review)

This action withdraws federal requirements applicable to Pennsylvania and imposes no regulatory requirements or costs on any person or entity. It does not interfere with the action or planned action of another agency, and does not have any budgetary impacts or raise novel legal or policy issues. Thus, it has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to Office of Management and Budget (OMB) review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden because it is administratively withdrawing federal requirements that no longer need to apply to Pennsylvania. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR part 131 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0049. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare a regulatory flexibility analysis of a rule that is subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. This action imposes no regulatory requirements or costs on any small entity. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title III of the Unfunded Mandates Reform Act (UMRA) (Pub. L. 104–4) establishes requirements for federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Today's rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Tribal, or local governments or the private sector because it imposes no enforceable duty on any of these entities. Thus, today's rule is not subject to the requirements of UMRA sections 202 and 205 for a written statement and small government agency plan. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and is therefore not subject to UMRA section 203.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure State and local government officials have an opportunity to provide input in the development of regulatory policies 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 governments. This rule imposes no regulatory requirements or costs on any State or local governments; therefore, it does not have federalism implications under Executive Order 13132.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This rule imposes no regulatory requirements or costs on any Tribal government. It does not have substantial direct effects on Tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000).

G. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)

This rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) because it is not economically significant and EPA has no reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution, or Use)

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

I. National Technology Transfer Advancement Act of 1995

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because this rule does not involve technical standards.

J. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. EPA approved Pennsylvania's antidegradation policy, which is consistent with 40 CFR 131.12(a) and provides the same level of protection as the federally promulgated antidegradation policy. This rule withdraws a redundant antidegradation policy.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2) and will be effective on December 15, 2008.

List of Subjects in 40 CFR Part 131

Environmental protection, Antidegradation, Water quality standards.

Dated: September 9, 2008.

Stephen L. Johnson,

Administrator.

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

PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 131.32 [Removed and Reserved]

■ 2. Section 131.32 is removed and reserved.

[FR Doc. E8–21464 Filed 9–12–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1989–0011; FRL–8715–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final Notice of Deletion of the Berks Landfill Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region III is publishing a direct final Notice of Deletion of the Berks Landfill Superfund Site (Site), located in Spring Township, Berks County, Pennsylvania, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the Commonwealth of Pennsylvania (Commonwealth), through the Pennsylvania Department of Environmental Protection (PADEP), because EPA has determined that all appropriate response actions under CERCLA, other than operation, maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under CERCLA.

DATES: This direct final deletion is effective November 14, 2008, unless EPA receives adverse comments by October 15, 2008. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1989–0011, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *E-mail: matzko.kristine@epa.gov.*
- *Fax:* 215–814–3002, Attn: Kristine Matzko (3HS21)
- *Mail:* EPA Region III, Attn: Kristine Matzko (3HS21), 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- *Hand delivery:* EPA Region III, Attn: Kristine Matzko (3HS21), 1650 Arch Street, Philadelphia, Pennsylvania 19103. Such deliveries are only accepted during business hours, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–1989–0011. 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 information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket

materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

Regional Center for Environmental Information, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, 215–814–5254. Business hours are Monday through Friday 8 a.m. to 5 p.m.

Township of Spring Municipal Office, 2800 Shillington Road, Reading, Pennsylvania 19608, 610–678–5393. Business hours are Monday through Friday 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT:

Kristine Matzko, Remedial Project Manager, U.S. Environmental Protection Agency, Region III, (3HS21) 1650 Arch Street, Philadelphia, Pennsylvania 19103, (215) 814–5719, e-mail *matzko.kristine@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region III is publishing this direct final Notice of Deletion of the Site from the NPL. The NPL constitutes Appendix B of 40 CFR part 300, which is the NCP, which EPA promulgated pursuant to section 105 of CERCLA of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective November 14, 2008, unless EPA receives adverse comments by October 15, 2008, on this document. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the ''Proposed Rules'' section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA Section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the Commonwealth prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA has provided the Commonwealth with this notice and the parallel Notice of Intent to Delete for review prior to their publication today, and the Commonwealth, through the PADEP, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, Reading Eagle. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Background and History

The Site is located in the Township of Spring, Berks County, Pennsylvania, about seven miles southwest of the City of Reading. The Site is several miles north of Route 222 between Wheatfield and Chapel Hill Roads.

Originally, the Berks Landfill property was an iron ore mine, and then the property was used for waste disposal.

The Berks Landfill was in operation from the 1950s to the 1980s. The Site consists of a 49-acre eastern landfill and a 19-acre western landfill. Initially, the western landfill was used for disposal, and then the eastern landfill was used

for disposal. There were two additional disposal areas referred to as the northern disposal area and the area behind the equipment building. These areas were used when access to the eastern or western landfill was not available.

In 1975, the eastern landfill was granted a solid waste permit by the Pennsylvania Department of Environmental Resources (PADER) to accept municipal and demolition refuse. In 1986 landfilling operations ended, and both the eastern and western landfills were closed.

Immediately adjacent to the landfills, and within the Site boundary, is a property formerly used to weigh the disposal trucks. After this function was no longer required, an auction business, Zerbe's Auction House, used one of the buildings. Presently, there are garages on the property used to store large equipment, and another building is used as an office. Also, north of the landfills is a former residential property that is now vacant.

Sampling of on-site groundwater wells in the late 1980s detected volatile organic compounds (VOCs) at concentrations above their respective drinking water standards or Maximum Contaminant Levels (MCLs), promulgated at 40 CFR Part 141 pursuant to the Safe Drinking Water Act, 42 U.S.C. Section 1412.

EPA listed the Site on the NPL on October 4, 1989, because of the Site's potential to negatively affect residential well water (54 FR 41015).

From 1990 to 1993 a series of protective measures were installed at the Site including the following: A fence was erected around the eastern landfill; the existing cap on the eastern landfill was repaired; and a pumping station was constructed to convey the leachate from the ponds to the local wastewater treatment plant.

Remedial Investigation and Feasibility Study (RI/FS)

In 1991 EPA entered into an Administrative Order on Consent with a group of responsible parties (RPs) to conduct a Remedial Investigation and Feasibility Study. The Remedial Investigation (RI) involved extensive programs of subsurface exploration, field testing, sampling, chemical analyses, geotechnical analyses, and data evaluation conducted between December 1991 and January 1994. The RI defined the geology, hydrogeology, construction of the existing landfill caps, and other features of the Site; assessed wetlands, and aquatic and terrestrial habitats; determined the nature and extent of constituents detected at the Site; and determined the potential fate mechanisms and transport pathways available to these constituents. The results of the RI were presented in the Remedial Investigation Report, which was submitted to EPA on March 13, 1995, and approved by EPA on March 29, 1996.

The results of the RI showed that VOCs were present in on-site groundwater. The groundwater was shown to discharge to the surface water drainageways and the Cacoosing Creek tributary system; however, these VOCs were not detected in surface water. The most important geologic feature identified during the RI was an intrusive diabase mass which almost entirely encircles the Site and lies beneath the Site in a bowl-like configuration. As a result of its orientation, low permeability and higher hydraulic pressures at depth, the diabase exhibits significant control over the groundwater flows at the Site.

A Feasibility Study (FS) was conducted between April 1996 and February 1997 to develop and evaluate appropriate remedial alternatives. The objectives of the FS were to prevent exposure to on-site groundwater via potable use, to monitor the groundwater, to repair the existing caps, and to repair the leachate management system. The Final Baseline Risk Assessment was submitted to EPA on July 1, 1996, and approved by EPA on November 27, 1996. The FS Report was approved by EPA on February 19, 1997.

Record of Decision Findings

A proposed plan that set forth EPA's preferred remedial alternative for the Site was released for public comment in May 1997. A Record of Decision (ROD) dated July 22, 1997 identified EPA's selected remedy for the Site. The remedy in the ROD consisted of the following components: Institutional controls to prevent future consumption of on-site groundwater, to restrict future development at the Site and to limit future earth moving activities at the Site; long-term monitoring including installation of a sentinel monitoring well cluster, sampling of residential wells and monitoring on-site wells, combustible landfill gases, and the adjacent aquatic habitat; operation and maintenance of the leachate management system; and repair of the landfill cap for the eastern landfill and maintenance of the eastern and western landfill caps. The groundwater remedy set forth in the ROD was natural containment and natural attenuation with long-term monitoring.

The remedial action objectives set forth in the ROD were the following: The prohibition of future consumption of on-site groundwater; long-term monitoring to ensure that MCLs or Maximum Contaminant Level Goals (MCLGs) continue to be maintained at the point of compliance; continued effective collection of site leachate; and repair and maintenance of the existing landfill caps.

The prohibition on groundwater consumption is limited to the point of compliance. The boundaries for the point of compliance are the eastern, western, and southern Site property boundaries and the northern boundary is Wheatfield Road.

Response Actions

In 1998 EPA issued a Unilateral Administrative Order (Docket No. III–98–071–DC) (UAO) to eighteen parties (Respondents) ordering them to design and construct the remedy described in the ROD. In accordance with the UAO, a subgroup of the Respondents developed a remedial design for the repair of the landfill cap and leachate collection system.

The Remedial Design Work Plan, submitted to EPA on July 1, 1998, provided the framework, schedule, and process that would be utilized to complete the design for the remedy in the ROD.

The Final Remedial Action Design Report was submitted to EPA on September 15, 1999, and included the design drawing package, technical specifications, the Operation, Maintenance, and Monitoring (OM&M) Plan including a Sampling and Analysis Plan, the Institutional Control Plan, Permit Requirements, Access Plan, the Construction Quality Assurance Plan (CQAP), and the Soil Erosion and Sediment Control Plan. EPA approved this final remedial design on September 30, 1999.

Following the approval of the remedial design, the Remedial Action Work Plan (RAWP) provided the methodologies, plans, and schedules of activities required to be completed prior to initiating construction of the Remedial Action (RA). The RAWP was submitted to EPA on January 7, 2000, and was approved by EPA on January 13, 2000.

The Remedial Action Construction Bidding Documents were issued by the Respondents, which included the CQAP, the RAWP, and the Health and Safety Plan. A pre-bid meeting was held at the Site on February 8, 2000. Bids were received on February 29, 2000, and the Remedial Action Contractor (RAC) was selected on March 16, 2000.

The Revised Construction Management Plan (CMP) and the RAC's

Health and Safety Plan were submitted to EPA on May 9, 2000, and approved by EPA on May 25, 2000. A pre-construction meeting was held at the Site on May 23, 2000, followed by RAC mobilization to the Site between May 29 and June 5, 2000. The RA construction activities commenced on June 5, 2000.

EPA and its contractor, the U.S. Department of Interior's Bureau of Reclamation, as well as PADEP, provided oversight of the construction of the remedy.

The components of the RA construction activities included construction and repair of access roads including laying of 7,000 feet of inspection trails on the western landfill, removal of surface debris, removal of existing tree and shrub vegetation, mowing of vegetation, clearing and grubbing of construction areas, repair of an area with exposed waste, repair of erosional features, repair of bare spots, repair of existing slopes, repair of the existing leachate management system including relining the 3 leachate ponds for a total volume of 1.5 million gallons, installation of the sentinel monitoring well, decommissioning of five groundwater monitoring wells, installation of nine gas monitoring probes, planting of 300 wetland trees, and revegetation of disturbed areas. The RA construction activities were substantially completed on October 31, 2000.

EPA conducted a pre-final inspection of the Site on October 31, 2000. A list of uncompleted minor items was identified during the pre-final inspection and was completed by the RAC by November 10, 2000. EPA completed its final inspection on November 14, 2000 and issued a Preliminary Project Close Out Report (PCOR) on December 22, 2000. The PCOR concluded that the Respondents had constructed the remedy in accordance with the Remedial Design plans and the performance-based specifications, and had initiated activities necessary to achieve performance standards and site completion.

The final Remedial Action Completion Report was submitted to EPA on July 27, 2001. The Remedial Action Construction Report documented that the RA construction at the Site was completed in accordance with the UAO and the Remedial Design, and met the performance standards in the ROD.

Cleanup Standards

The ROD established a natural containment and natural attenuation groundwater remedy. The results of the groundwater sample analyses have continued to demonstrate the effectiveness of the natural groundwater containment system and that the ROD performance standards are being met. VOCs detected on-site have not been detected in either the off-site sentinel or residential wells which demonstrates the containment of the groundwater. Detections of cis-1,2-dichloroethene (cis-1,2-DCE) and vinyl chloride (VC) in on-site groundwater monitoring wells in the eastern landfill indicate that natural biological attenuation of the chlorinated ethene compounds (i.e., trichloroethene (TCE)) is occurring. Further, the TCE concentrations have been declining in a well in the eastern landfill.

The sentinel well was installed in order to monitor the natural containment and natural attenuation groundwater remedy set forth in the ROD. The sentinel well, located on a property northwest of the Site, is downgradient of the Site in the direction of groundwater flow at the point where groundwater discharges to the Cacoosing Creek tributary. The sentinel well is sampled for VOCs and metals. There have been no exceedances of MCLs for VOCs in the sentinel well. Three metals (aluminum, iron, and manganese) were previously detected in the sentinel well above their respective MCLs. Currently, aluminum results are within the range of its secondary MCL and iron and manganese are less than their respective MCL. Since the Site was historically an iron-ore mine, the presence of some concentrations of metals is a naturally occurring event.

EPA and the Respondents have sampled the groundwater the residents use as their drinking water. The residents selected for the sampling are downgradient of the Site in the general direction of groundwater flow. Residential groundwater is sampled for VOCs and total metals. None of the residents have treatment systems on their groundwater as a result of site conditions. There have been no detections of VOCs related to the Site in the residential wells and metals are either not detected or detected below the MCLs.

The ROD performance standards for groundwater off-site have been achieved. The performance standard for groundwater states that there shall be no exceedances of MCLs off-site. The VOCs detected on-site above MCLs are not detected in the off-site sentinel well or residential wells, thereby demonstrating compliance with the performance standard. The metals detected on-site above MCLs are detected in the off-site sentinel well within the range of the secondary MCL or below the MCL, thereby also demonstrating compliance with the performance standard.

Three VOCs are detected above the MCL in on-site wells: cis-1,2-DCE, TCE, and VC. These VOCs detected in the on-site wells above MCLs are not detected in the off-site wells. One well (well C3D) on the eastern landfill shows declining concentrations of cis-1,2-DCE, TCE, and VC. The two other wells are at the base of the eastern landfill: One well (G–5) shows consistent levels of VC and the second well (MP–18S) shows declining TCE concentrations and consistent levels of cis-1,2-DCE and VC. The remaining wells in the groundwater monitoring system have either no detections or low-level detections of VOCs.

Three on-site wells (C7S, G5, G12) have detections of metals (aluminum, iron, and manganese) above their respective MCLs. In most cases, the concentrations of these metals in the on-site wells are decreasing over time. The metals detected on-site above MCLs are detected in the off-site sentinel well within the range of the secondary MCL for aluminum or below the MCL for iron and manganese. Since the Site was historically an iron-ore mine, the presence of some concentrations of metals is a naturally occurring event.

Landfill gas is monitored for combustible gases, carbon monoxide, hydrogen sulfide, and oxygen. The landfill gas monitors are located between the edge of the eastern landfill and the perimeter of the northeast corner of the Site and also near two buildings (closed auction house and the equipment building). As part of the remediation, passive landfill gas vents were installed in the eastern landfill.

There have been detections of combustible gases near the closed auction house and equipment building. In response to the detections, there is ambient air monitoring being conducted inside the buildings and continuous monitors for combustible gases have been installed in the buildings. The interior monitors have not detected landfill gases in the buildings. Landfill gases will continue to be monitored around these buildings and any other future structures.

Vapor intrusion is not considered a pathway of concern based on site conditions and monitoring results. The sentinel well and residential wells have not detected VOCs. The diabase naturally contains the groundwater and discharges the groundwater to the local stream prior to the residential properties, so there is no hydraulic connection to the Site. The landfills are covered, the on-site groundwater concentrations have demonstrated

degradation and declining levels, there are restrictions on use of the property, and landfill gases are monitored inside and outside the buildings on-site.

Operation and Maintenance

Operation, maintenance, and monitoring commenced in December 2000. The OM&M Plan included with the Remedial Action Design Report was modified based on as-built conditions following RA construction activities. An updated OM&M Plan was submitted to EPA on May 4, 2001, and approved by EPA on September 24, 2001. The OM&M Plan included operations, maintenance, and monitoring requirements for the first five calendar years following the completion of the RA construction (i.e. 2001 to 2005). The OM&M Plan described specific monitoring procedures to be implemented to meet the performance standards, including regular groundwater monitoring of existing on-site monitoring wells, off-site residential wells, and a sentinel well; routine monitoring of combustible gas levels adjacent to on-site buildings and at the landfill perimeter; and periodic monitoring of surface water, sediment and benthic macroinvertebrates within adjacent streams. On July 28, 2006 EPA approved a new monitoring and inspection schedule for the next five calendar years (i.e. 2006 to 2010).

The OM&M Plan specifies an annual frequency of monitoring the groundwater wells, the residential wells, and the sentinel well for VOCs, metals, field parameters, natural attenuation parameters, and groundwater levels. The monitoring schedule also includes an annual frequency for monitoring landfill gas.

Fourteen groundwater and landfill gas monitoring events have been conducted since the completion of the RA construction in accordance with the EPA-approved monitoring schedules, including events during calendar years 2000 through 2007. Results of each monitoring event are presented in an Operation, Maintenance, and Monitoring Report, and submitted to EPA. Following each monitoring event, letters are sent to residents regarding the sampling results of their wells and a letter is sent to the local sewer authority regarding the results of the leachate sampling.

Two aquatic habitat assessments (sampling of surface water, sediment, and macroinvertebrates) have been conducted in accordance with the monitoring schedule since the completion of the RA construction, including one event in 2001 and one event in 2004. The results of these assessments were presented in an Aquatic Habitat Assessment Report following each event, and compared with the aquatic habitat assessment conducted in 1999 prior to the RA construction. The results of the aquatic habitat assessments have demonstrated good surface water and sediment quality at locations downstream of the Site, and that in general, the aquatic habitats at the downstream locations are healthy and productive, supporting a relatively diverse and pollution intolerant population of macroinvertebrate species.

In addition to the monitoring schedule, the OM&M Plan describes specific operation and maintenance procedures to be implemented to meet the performance standards set forth in the ROD including inspection, repair (as necessary), and continued operation and maintenance of the leachate collection system (collection piping, ponds and pumping station); and long-term maintenance of the forested and non-forested portions of the eastern and western landfill caps and adjacent disposal areas (northern disposal area and the area behind the equipment building). The operations and maintenance schedule specifies routine inspections of the Site access controls, landfill caps, leachate management system, groundwater monitoring well network, and landfill gas monitoring probe network. The leachate collection system is inspected monthly. The eastern landfill cap and surface water management features are inspected annually. The eastern landfill is mowed once a year.

The historical results of the monitoring events and an analysis of the data trends, along with the results of the inspection and maintenance events, are presented in the Annual Report completed after each calendar year of OM&M, and submitted to EPA. The Annual Reports have documented that the performance standards for the operation and monitoring of the leachate management system and landfill cap continue to be met.

The remedy for the Site includes institutional controls. Institutional controls refer to non-engineering measures, such as legal controls, intended to limit human activity in such a way as to prevent or reduce exposure to hazardous substances and protect a remedy. The institutional controls selected by EPA in the ROD call for the placement of legal controls to prevent future consumption of on-site groundwater, to restrict future development at the Site, and to limit future earth moving activities at the Site.

In the ROD EPA selected six performance standards for institutional controls. Three of the performance standards provide specific restrictions on groundwater use in order to prevent drinking water uses and to protect the natural containment and attenuation remedy. One performance standard restricts earth moving activity in specified areas. The remaining two performance standards state that title restrictions, along with other appropriate means, shall be used to implement the first four performance standards and that the title restrictions should be recorded with the Berks County Recorder of Deeds.

In the UAO EPA ordered that specific restrictions be placed on four parcels, named as Parcel A, Parcel B, Parcel C, and Parcel D, (Section VIII of the UAO—Access To and Use of the Site). Parcel A is the parcel with the two landfills and the leachate lagoons. Parcel B is the parcel with the closed auction house, equipment building, and the portion of the landfill referred to as the ''area behind the equipment building.'' Parcel B also provides access to the landfills, Parcel A. Parcel C is the former residential property which is now vacant. Parcel D is the property that contains the sentinel well. The UAO tailored the restrictions for each parcel based on the appropriate uses of each parcel, the necessary institutional control, and the performance standards in the ROD.

The use restrictions required in the UAO for Parcel A include restrictions on limiting the use of the property, restrictions on groundwater use, restrictions on land disturbance, and restrictions on activities such as hunting, fishing, and tree removal. A notice containing a recitation of the restrictions in the UAO for Parcel A was filed by the parcel owner with the Berks County Recorder of Deeds as an additional institutional control on February 19, 2007.

An 11-acre portion of Parcel B that is on the south side of Wheatfield Road directly adjacent to the landfills was purchased by the current owner in 2005. Prior to the 2005 sale, EPA issued a comfort letter to the prospective purchaser. EPA also sent a letter to Township of Spring on the acceptable uses of the 11-acre portion of Parcel B, information about the remedy, and protections that were necessary to maintain the remedy. The current owner uses the 11-acre portion of Parcel B for his business and plans to add a storage unit business. The other portion of Parcel B, which is a residential area, is on the north side of Wheatfield Road and is not considered part of the Site.

A deed dated March 18, 2005 contains the appropriate use restrictions for the 11-acre portion of Parcel B. The restrictions listed in the deed include restrictions on groundwater use, restrictions limiting the use of the property, restrictions on land disturbance, and limitations on activities to protect the remedy. The deed with the use restrictions are institutional controls.

For Parcel C the current owner of the 11-acre portion of Parcel B also bought Parcel C to maintain the property as open space. Parcels B and C are adjacent to one another. A deed dated July 10, 2006 contains restrictions on the use of the parcel consistent with the UAO. The restrictions listed in the deed include restrictions on groundwater use, restrictions limiting the use of the property, restrictions on land disturbance, and limitations on activities to protect the remedy. The deed with the use restrictions are institutional controls.

Regarding Parcel D, the owner of Parcel D signed a letter agreement dated August 14, 2002 with the UAO Respondents granting the Respondents access to install a sentinel well and to collect groundwater samples. The letter agreement also provides for groundwater use restrictions and prohibitions on interfering with the well. The letter agreement is an institutional control.

Five-Year Review

Since the remedy for the Site utilized containment of the hazardous materials as a method to reduce risk, EPA will conduct five-year reviews to insure that the remedy is functioning as designed and preventing exposure to human health and the environment. EPA completed the first statutory Five-Year Review on August 2, 2005 and has determined that the remedy for Berks Landfill remains protective of human health and the environment. EPA plans to complete the next five-year review by August, 2010.

Community Involvement

To ensure that the community was well informed about activities at the Site, a series of outreach activities were performed. Public meetings at key points in the remedial process were held such as a meeting on the proposed remedy in 1997 and the construction of the remedy in 2000. Since then, in 2005 as part of the five-year review, EPA placed an advertisement in the Reading Eagle and mailed a fact sheet notifying residents of the five-year review. In addition, residents whose water is tested receive annual information on their well water test results. As part of the deletion, EPA will place an advertisement in the local paper notifying the community of the public comment period, the process for submitting comments, and location of the deletion docket.

Determination That the Site Meets the Criteria for Deletion in the NCP

This Site meets all the requirements in the NCP and the criteria specified in OSWER Directive 9320.2–09–A–P, *Close Out Procedures for National Priorities List Sites.* Specifically, sampling performed during operation, maintenance, and monitoring verifies the Site has achieved the ROD remedial action objective that no site-related contaminants exceed MCLs off-site and that all components of the remedy selected by EPA in the ROD have been implemented. Operation, maintenance, and monitoring are, and will continue to be, performed by the Respondents pursuant to the 1998 UAO.

V. Deletion Action

The EPA, with concurrence of the Commonwealth through the PADEP, has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and monitoring and five-year reviews, have been completed. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective November 14, 2008 unless EPA receives adverse comments by October 15, 2008. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion, and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 5, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by removing the entry under Pennsylvania for ''Berks Landfill'', ''Spring Township''.

[FR Doc. E8–21305 Filed 9–12–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 2

Testimony by Employees and the Production of Documents in Proceedings Where the United States Is Not a Party

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: This rule amends Part 2 of Title 45 of the Code of Federal Regulations, which provides that employees and former employees of the Department of Health and Human Services (HHS or Department) may not provide testimony as part of their official duties in litigation where the United States or a federal agency is not a party, without the approval of the head of the agency. The purpose of these amendments is to modify the definition of ''employee'' contained in 45 CFR part 2. Under these amendments, the definition of employee will be revised to reflect changes in Medicare contracting, including changes brought about by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173). In addition, the definition of employee will be modified to include employees of a state agency performing survey, certification, or enforcement functions under Title XVIII of the Social Security Act or Section 353 of the Public Health Service Act. Further, the definition of employee with respect to employees of entities covered by the

Federally Supported Health Centers Assistance Act, as amended, 42 U.S.C. 233(g)–(n) (FSHCAA), will be limited to testimony requested in medical malpractice tort litigation which relates to medical functions performed at a time when the center was covered under FSHCAA.

DATES: *Effective Date:* October 15, 2008.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Davis, Associate General Counsel, General Law Division, Office of the General Counsel, Department of Health and Human Services, 330 Independence Ave., SW., Room 4760 Cohen Bldg., Washington, DC 20201, Telephone Number 202–619–0150.

SUPPLEMENTARY INFORMATION: In 1987, the Department of Health and Human Services published regulations addressing the issue of the increasing number of requests for the testimony of Department employees in litigation involving only private parties and not the United States. The regulations generally prohibit an employee or former employee of the Department from giving testimony concerning information acquired in the course of performing official duties or because of such person's official capacity, except where the relevant agency head determines that the appearance would promote the objectives of the Department.

These amendments are designed to address changes in Medicare contracting, including changes brought about by the MMA. The amendments also address involvement of the Department in matters in which parties request testimony or documents from employees of state survey agencies or contractors that carry out survey, certification, or enforcement activities for the Medicare and CLIA programs. Finally, these amendments address the involvement of the Department in cases other than medical malpractice matters where parties request testimony from any current or former employee or contractor of an entity covered by the FSHCAA.

Section 911 of the MMA added section 1874A to the Social Security Act (SSA) and took the separate authorities under which the Centers for Medicare & Medicaid Services (CMS) contracted with intermediaries and carriers and consolidated them into a single authority for a new type of contractor, the Medicare Administrative Contractor (MAC). See MMA section 911. Under section 911, the Secretary may enter into contracts with any eligible entity to serve as a MAC with respect to the performance of the core Medicare administrative functions listed at SSA section 1874A(a)(4). Thus, in the contracting environment created by the MMA, MACs perform functions once performed solely by intermediaries and carriers. Currently, CMS has agreements with intermediaries, carriers and MACs to make Medicare payments for health care items and services. Furthermore, under section 911(e) of the MMA, any reference to a carrier or intermediary under title XI or XVIII of the Social Security Act (or any regulation, manual instruction, interpretative rule, statement of policy, or guideline issued to carry out these titles) shall be deemed a reference to a MAC.

Furthermore, historically, carriers and intermediaries also carried out all Medicare program integrity activities, such as cost report audits and medical, utilization, and fraud reviews. However, CMS has begun contracting with Program Safeguard Contractors (PSCs) and Recovery Audit Contractors (RACs) to perform program integrity activities, *see* SSA section 1893, although intermediaries and carriers continue to carry out many program integrity functions. There is substantial functional overlap between the functions that are performed by PSCs and RACs and the program integrity activities that are now, or were once, carried out by carriers and intermediaries.

Accordingly, we are amending the definition of ''employee'' in these regulations to include the employees of contractors that perform the core Medicare administrative functions listed at SSA sections 1874A(a)(4) and 1893. Under such definition, these regulations cover intermediaries, carriers, MACs, PSCs and RACs, and any successor entities that perform the functions listed in the amended definition. Not only does this definition reflect the more flexible contracting procedures created by the MMA, but a functional definition of ''employee'' also limits the need to amend these regulations again in the event Congress further modifies the Medicare contracting nomenclature through future legislation.

The second amendment concerns requests for testimony and documents of employees of contractors, subcontractors, and state survey agencies that carry out many of the Department's survey, certification, and enforcement activities. Section 1864 of the Social Security Act provides that the Secretary shall enter into agreements with states under which appropriate state or local survey agencies determine whether providers meet Medicare conditions of participation, suppliers meet Medicare conditions of coverage, and rural health clinics meet Medicare conditions of certification. Furthermore, under section 353(o) of the Public Health Service Act, the Secretary is permitted to use the services of state agencies to carry out his responsibilities under the Clinical Laboratory Improvement Act Amendments of 1988 (CLIA). Thus, employees of state survey agencies carry out federal functions for both the Medicare and CLIA programs. In addition, contractors of the Department under certain circumstances survey and certify providers and suppliers. Contractors of the Department also perform validation surveys to ensure that state survey agencies and deeming authorities satisfactorily perform their survey, certification, and enforcement responsibilities.

Parties in private litigation frequently request testimony and documents from employees of contractors, subcontractors, and state survey agencies that perform survey, certification, and enforcement functions under the Medicare and CLIA programs. These requests are especially prevalent in medical malpractice litigation. Although any specific request for testimony or documents may not be unduly burdensome, the requests divert employees from their federal survey, certification, and enforcement responsibilities. The cumulative effect of these requests can impede these activities. Moreover, we believe that information gathered during these federal activities is federal information and may be protected by governmental privileges. Therefore, we are amending the definition of ''employee'' in these regulations to include employees of contractors, subcontractors, and state survey agencies that perform survey, certification, or enforcement activities under the Medicare and CLIA programs.

We recognize that employees of state survey agencies may have dual roles. These employees perform activities for the Medicare and CLIA programs, but also have survey, certification, and enforcement responsibilities with respect to state requirements. For example, it is our understanding that state survey agencies commonly survey skilled nursing facilities for compliance with both federal and state requirements during a single visit. Under 45 CFR 2.1(a), the Department's regulations apply only to information acquired in the course of performing official duties or because of the employee's official capacity with the Department. Therefore, these regulations will apply to requests for testimony or documents from an employee of a contractor, subcontractor, or state agency only to the extent the information was acquired in the course of performing survey,

certification, or enforcement functions under Title XVIII of the Social Security Act or section 353 of the Public Health Service Act and regardless of whether documents are also relevant to the state's activities.

The third amendment addresses the increasing frequency of requests to the Department in cases other than medical malpractice matters for employees and qualified contractors of entities covered under the FSHCAA to provide testimony. The FSHCAA provides that, for the purposes of the Federal Tort Claims Act (FTCA), employees and certain qualified health care practitioner contractors acting within the scope of their employment with an entity covered under the FSHCAA are deemed to be employees of the Public Health Service. 42 U.S.C. 233(g)(1)(A). As such, these employees or qualified contractors are deemed to be employees solely for the purpose of securing coverage under the FTCA in medical malpractice cases brought against them. The current definition of ''employee'' in the Department's regulations includes employees and contractors of a covered entity when the requested testimony relates to their performance of medical, surgical, dental or related functions which were performed at a time when HHS deemed the entity to be covered by the FSHCAA, even in matters that do not relate to medical malpractice litigation.

The interests of the United States are implicated in state court actions that may impact upon liability under the FTCA. By amending the definition to require application of these regulations in medical malpractice cases only, the number of requests to the Department for testimony of federally supported health center employees and qualified contractors will be significantly reduced. Thus, the burden on the Department to respond to these time-consuming requests will be lessened.

Further, the current definition of ''employee'' under subpart (3) of section 2.2 refers to ''the requested testimony or information.'' Because FSHCAA entities and records are normally subject to state law and are beyond the control of the Department, we have only applied the Department's regulations in matters involving the FSHCAA to requests for testimony in FTCA matters, not to record requests. Therefore, we have limited this subpart to requests for testimony.

Public Participation: This rule is published as a final rule. It is exempt from public comment, pursuant to 5 U.S.C. 553(b)(A), as a rule of ''agency organization, procedure, or practice.''

Paperwork Reduction Act: This regulation is not subject to the Paperwork Reduction Act because it deals solely with the Department's internal rules of organization, procedure or practice.

Cost/Regulatory Analysis: We have examined the impact of this rule as required by Executive Order (EO) 12866 (Regulatory Planning and Review), as amended, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*); the Unfunded Mandated Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*); and EO 13132 (Federalism). EO 12866, as amended, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize the benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects ($100 million or more in 1 year). We have determined that the rule is consistent with the principals set forth in the EO, and we find that the rule would not have an effect on the economy that exceeds $100 million in any one year. Under the RFA, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities and determine it will not have any effect. The agency has considered the effect that this rule would have on small entities. I hereby certify, under 5 U.S.C. 605(b), that the rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizations and small local governments. Therefore, a regulatory flexibility analysis is not required. The UMRA also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribunal governments, in the aggregate, or by the private sector of $100 million. As noted above, we find that the rule would not have an effect of this magnitude on the economy. Therefore, no further analysis is required under the UMRA. EO 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. We have reviewed the rule under the threshold criteria of EO 13132 and have determined that this rule would not have substantial direct impact on States, or on the distribution of power and responsibilities among the various levels of government. As there are no federalism implications, a federalism impact statement is not required.

List of Subjects in 45 CFR Part 2

Administrative practice and procedure, Freedom of Information, Government employees.

■ Accordingly, for the reasons set forth in the preamble, 45 CFR part 2 is amended as follows:

PART 2—[AMENDED]

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 552.

■ 2. The definition of ''Employee'' in 45 CFR 2.2 is amended by revising the introductory text and paragraphs (2) and (3), adding paragraph (4), and placing the definition in alphabetical order to read as follows:

§ 2.2 Definitions.

* * * * *

Employee of the Department includes current and former:

* * * * *

(2) Employees of intermediaries, carriers, Medicare Administrative Contractors, Program Safeguard Contractors, and Recovery Audit Contractors, and any successor entities, that perform one or more of the following functions described in section 1874A or 1893 of the Social Security Act relating to the administration of the Medicare program:

(i) Determination of payment amounts; making payments; beneficiary education and assistance; providing consultative services; communication with providers; or, provider education and technical assistance; or,

(ii) Other such functions as are necessary to carry out the Medicare program, including any of the following program integrity functions under section 1893 of the Social Security Act:

(A) Review of activities of providers or suppliers, including medical and utilization review and fraud review;

(B) Auditing of cost reports;

(C) Determinations as to whether payment should not be, or should not have been, made because Medicare is the secondary payer, and recovery of payments that should not have been made;

(D) Education of providers, beneficiaries, and other persons with respect to payment integrity and benefit quality assurance issues; or,

(E) Developing (and periodically updating) a list of items of durable medical equipment which are subject to prior authorization.

(3) Employees of a contractor, subcontractor, or state agency performing survey, certification, or enforcement functions under title XVIII of the Social Security Act or Section 353 of the Public Health Service Act but only to the extent the requested information was acquired in the course of performing those functions and regardless of whether documents are also relevant to the state's activities.

(4) Employees and qualified contractors of an entity covered under the Federally Supported Health Centers Assistance Act of 1992, as amended, 42 U.S.C. 233(g)–(n), (FSHCAA), provided that the testimony is requested in medical malpractice tort litigation and relates to the performance of medical, surgical, dental or related functions which were performed by the entity, its employees and qualified contractors at a time when the DHHS deemed the entity and its employees and qualified contractors to be covered by the FSHCAA.

* * * * *

Dated: August 28, 2008.

Michael O. Leavitt,

Secretary.

[FR Doc. E8–21113 Filed 9–12–08; 8:45 am]

BILLING CODE 4150–26–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202 and 252

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to update the list of DoD contracting activities and to correct a reference in a contract clause.

DATES: *Effective Date:* September 15, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0311; facsimile 703–602–7887.

SUPPLEMENTARY INFORMATION: This final rule amends DFARS text as follows:

- *202.101*. Adds the U.S. Transportation Command to the list of DoD contracting activities.
- *252.212–7001*. Amends the reference to the clause at 252.219–7004 in paragraph (b)(3) to reflect the current clause date.

List of Subjects in 48 CFR Parts 202 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 202 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 202 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

■ 2. Section 202.101 is amended in the definition of ''Contracting activity'' by adding at the end ''United States Transportation Command, Directorate of Acquisition''.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

■ 3. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date to read ''(SEP 2008)''; and

■ b. In paragraph (b)(3) by removing ''(APR 2007)'' and adding in its place ''(AUG 2008)''.

[FR Doc. E8–21375 Filed 9–12–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 206, 225, and 252

RIN 0750–AG02

Defense Federal Acquisition Regulation Supplement; Acquisitions in Support of Operations in Iraq or Afghanistan (DFARS Case 2008–D002)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Sections 886 and 892 of the National Defense Authorization Act for Fiscal Year 2008. Section 886 provides authority for DoD to limit competition when acquiring products or services in support of operations in Iraq or Afghanistan. Section 892 addresses competition requirements for the procurement of small arms for assistance to Iraq or Afghanistan.

DATES: *Effective date:* September 15, 2008.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before November 14, 2008, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2008–D002, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2008–D002 in the subject line of the message.

○ *Fax:* 703–602–7887.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

○ *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703–602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

Section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181) provides authority for DoD to limit competition when acquiring products or services in support of military operations or stability operations in Iraq or Afghanistan (including security, transition, reconstruction, and humanitarian relief activities) under certain circumstances. In those circumstances, and when the required determination is made, Section 886 authorizes DoD to—

○ Limit competition to products or services from Iraq or Afghanistan;

○ Restrict an acquisition to a particular source or sources from Iraq or Afghanistan; or

○ Provide a preference for products or services from Iraq or Afghanistan.

House Conference Report 110–477 requires DoD to submit a semi-annual report to the congressional defense committees addressing the use of the authority provided in Section 886 through the end of fiscal year 2009.

Section 892 of Public Law 110–181 applies to acquisitions of small arms for assistance to the Army of Iraq or Afghanistan, the Police Forces of Iraq or Afghanistan, and other security organizations of Iraq or Afghanistan. For such acquisitions, Section 892 contains requirements for DoD to ensure, consistent with 10 U.S.C. 2304, that—

○ Full and open competition is obtained to the maximum extent practicable;

○ No responsible U.S. manufacturer is excluded from competing for such acquisitions; and

○ Products manufactured in the United States are not excluded from the competition.

This interim rule includes—

○ A new Subpart 225.77 to implement the new statutory provisions.

○ A new Trade Agreements provision, and alternate paragraphs for use with the existing Trade Agreements clause, to remove the prohibition against acceptance of Iraqi end products that would otherwise apply to acquisitions subject to the Trade Agreements Act.

○ A new solicitation provision and contract clause to implement the preference for Iraqi and Afghani products authorized by Section 886. The rule permits tailoring of the provision and clause to provide a preference for products of only Iraq or only Afghanistan as appropriate.

○ A new contract clause for use in acquisitions conducted using the authority of Section 886 to restrict an acquisition to Iraqi or Afghani items or sources.

○ Direction that contracting officers should not use Buy American Act/Balance of Payments Program/Trade Agreements provisions or clauses that might otherwise apply if the acquisition were not conducted using the authority of Section 886.

○ Direction that, for acquisitions conducted using the authority of Section 886, the justification and approval addressed in FAR Subpart 6.3 is not required; DoD considers the authority of Section 886 to operate independently of the competition requirements of 10 U.S.C. 2304. However, the rule contains requirements for a written determination to document the rationale for the selected acquisition procedure, in accordance with Section 886.

○ Clarification that construction contracts are included within the scope of acquisitions that may be conducted using the authority of Section 886, consistent with the statutory intent of providing a stable source of jobs and employment in Iraq and Afghanistan.

○ Exclusion of small arms from the items that may be acquired using the authority of Section 886, in view of the specific requirement for competition in the acquisition of small arms addressed in Section 892 of Public Law 110–181.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because application of the rule is limited to acquisitions in support of operations in Iraq or Afghanistan. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2008–D002.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Sections 886 and 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). Section 886 provides special authority for use in the acquisition of products or services in support of operations in Iraq or Afghanistan. Section 892 requires DoD to ensure that competition is obtained to the maximum extent practicable when acquiring small arms for assistance to Iraq or Afghanistan. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 206, 225, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 206, 225, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 206, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 206—COMPETITION REQUIREMENTS

■ 2. Sections 206.303 and 206.303–70 are added to read as follows:

206.303 Justifications.

206.303–70 Acquisitions in support of operations in Iraq or Afghanistan.

The justification and approval addressed in FAR 6.303 is not required for acquisitions conducted using a procedure specified in 225.7703–1(a).

PART 225—FOREIGN ACQUISITION

■ 3. Section 225.401–71 is added to read as follows:

225.401–71 Products or services in support of operations in Iraq or Afghanistan.

When acquiring products or services, other than small arms, in support of operations in Iraq or Afghanistan using a procedure specified in 225.7703–1(a), the purchase restriction at FAR 25.403(c) does not apply with regard to products or services from Iraq.

■ 4. Section 225.502 is amended by revising paragraph (b)(i) and adding paragraph (c)(iv) to read as follows:

225.502 Application.

(b) * * *

(i) Consider only offers of U.S.-made, qualifying country, or designated country end products, except as permitted by 225.403 or 225.7703–1.

* * * * *

(c) * * *

(iv) If the solicitation includes the provision at 252.225–7023, Preference for Products or Services from Iraq or Afghanistan, use the evaluation procedures at 225.7703–3.

■ 5. Section 225.1101 is amended as follows:

■ a. In paragraph (2)(iii), by removing ''or'';

■ b. In paragraph (2)(iv)(B), by removing the period and adding in its place ''; or'';
■ c. By adding paragraph (2)(v);
■ d. By revising paragraphs (5) and (6);
■ e. By redesignating paragraphs (7) through (10) as paragraphs (8) through (11) respectively;
■ f. By adding a new paragraph (7);
■ g. In newly designated paragraph (11)(ii)(A), by removing ''or'';
■ h. In newly designated paragraph (11)(ii)(B), by removing the period at the end and adding in its place ''; or''; and
■ i. By adding paragraph (11)(ii)(C) to read as follows:

225.1101 Acquisition of supplies.

* * * * *

(2) * * *

(v) All line items will be acquired using a procedure specified in 225.7703–1(a).

* * * * *

(5) Except as provided in paragraph (7) of this section, use the provision at 252.225–7020, Trade Agreements Certificate, instead of the provision at FAR 52.225–6, Trade Agreements Certificate, in solicitations that include the clause at 252.225–7021, Trade Agreements.

(6)(i) Use the clause at 252.225–7021, Trade Agreements, instead of the clause at FAR 52.225–5, Trade Agreements, if the Trade Agreements Act applies.

(ii) Use the clause with its Alternate I in solicitations and contracts that include the clause at 252.225–7024, Requirement for Products or Services from Iraq or Afghanistan, unless the clause at 252.225–7024 has been modified to provide a preference only for the products of Afghanistan.

(iii) Do not use the clause if—

(A) Purchase from foreign sources is restricted, unless the contracting officer anticipates a waiver of the restriction; or

(B) The clause at 252.225–7026, Acquisition Restricted to Products or Services from Iraq or Afghanistan, is included in the solicitation and contract.

(iv) The acquisition of eligible and noneligible products under the same contract may result in the application of trade agreements to only some of the items acquired. In such case, indicate in the Schedule those items covered by the Trade Agreements clause.

(7) Use the provision at 252.225–7022, Trade Agreements Certificate—Inclusion of Iraqi End Products, instead of the provision at FAR 52.225–6, Trade Agreements Certificate, in solicitations that include the clause at 252.225–7021, Trade Agreements, with its Alternate I.

* * * * *

(11) * * *

(ii) * * *

(C) Using a procedure specified in 225.7703–1(a).

* * * * *

■ 6. Section 225.7501 is amended as follows:
■ a. By redesignating paragraphs (a)(5) and (6) as paragraphs (a)(6) and (7) respectively; and
■ b. By adding a new paragraph (a)(5) to read as follows:

225.7501 Policy.

* * * * *

(a) * * *

(5) Use of a procedure specified in 225.7703–1(a) is authorized for an acquisition in support of operations in Iraq or Afghanistan;

* * * * *

■ 7. Subpart 225.77 is added to read as follows:

Subpart 225.77—Acquisitions in Support of Operations in Iraq or Afghanistan

Sec.
225.7700 Scope.
225.7701 Definitions.
225.7702 Acquisition of small arms.
225.7703 Acquisition of products or services other than small arms.
225.7703–1 Acquisition procedures.
225.7703–2 Determination requirements.
225.7703–3 Evaluating offers.
225.7703–4 Reporting requirement.
225.7703–5 Solicitation provisions and contract clauses.

Subpart 225.77—Acquisitions in Support of Operations in Iraq or Afghanistan

225.7700 Scope.

This subpart implements Section 886 and Section 892 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181).

225.7701 Definitions.

As used in this subpart—

Product from Iraq or Afghanistan means a product that is mined, produced, or manufactured in Iraq or Afghanistan.

Service from Iraq or Afghanistan means a service that is performed in Iraq or Afghanistan predominantly by citizens or permanent resident aliens of Iraq or Afghanistan.

Small arms means pistols and other weapons less than 0.50 caliber.

Source from Iraq or Afghanistan means a source that—

(1) Is located in Iraq or Afghanistan; and

(2) Offers products or services from Iraq or Afghanistan.

225.7702 Acquisition of small arms.

(a) Except as provided in paragraph (b) of this section, when acquiring small arms for assistance to the Army of Iraq, the Army of Afghanistan, the Iraqi Police Forces, the Afghani Police Forces, or other Iraqi or Afghani security organizations—

(1) Use full and open competition to the maximum extent practicable, consistent with the provisions of 10 U.S.C. 2304;

(2) If use of other than full and open competition is justified in accordance with FAR Subpart 6.3, ensure that—

(i) No responsible U.S. manufacturer is excluded from competing for the acquisition; and

(ii) Products manufactured in the United States are not excluded from the competition; and

(3) If the exception at FAR 6.302–2 (unusual and compelling urgency) applies, do not exclude responsible U.S. manufacturers or products manufactured in the United States from the competition for the purpose of administrative expediency. However, such an offer may be rejected if it does not meet delivery schedule requirements.

(b) Paragraph (a)(2) of this section does not apply when—

(1) The exception at FAR 6.302–1 (only one or a limited number of responsible sources) applies, and the only responsible source or sources are not U.S. manufacturers or are not offering products manufactured in the United States; or

(2) The exception at FAR 6.302–4 (international agreement) applies, and United States manufacturers or products manufactured in the United States are not the source(s) specified in the written directions of the foreign government reimbursing the agency for the cost of the acquisition of the property or services for such government.

225.7703 Acquisition of products or services other than small arms.

225.7703–1 Acquisition procedures.

(a) Subject to the requirements of 225.7703–2, a product or service (including construction), other than small arms, in support of operations in Iraq or Afghanistan, may be acquired by—

(1) Providing a preference for products or services from Iraq or Afghanistan in accordance with the evaluation procedures at 225.7703–3;

(2) Limiting competition to products or services from Iraq or Afghanistan; or

(3) Using procedures other than competitive procedures to award a contract to a particular source or sources from Iraq or Afghanistan. When other than competitive procedures are used, the contracting officer shall document

the contract file with the rationale for selecting the particular source(s).

(b) For acquisitions conducted using a procedure specified in paragraph (a) of this subsection, the justification and approval addressed in FAR Subpart 6.3 is not required.

225.7703–2 Determination requirements.

Before use of a procedure specified in 225.7703–1(a), a written determination must be prepared and executed as follows:

(a) For products or services to be used only by the military forces, police, or other security personnel of Iraq or Afghanistan, the contracting officer shall—

(1) Determine in writing that the product or service is to be used only by the military forces, police, or other security personnel of Iraq or Afghanistan; and

(2) Include the written determination in the contract file.

(b) For products or services not limited to use by the military forces, police, or other security personnel of Iraq or Afghanistan, the following requirements apply:

(1) The appropriate official specified in paragraph (b)(2) of this subsection must determine in writing that it is in the national security interest of the United States to use a procedure specified in 225.7703–1(a), because—

(i) The procedure is necessary to provide a stable source of jobs in Iraq or Afghanistan; and

(ii) Use of the procedure will not adversely affect—

(A) Operations in Iraq or Afghanistan (including security, transition, reconstruction, and humanitarian relief activities); or

(B) The U.S. industrial base. The authorizing official generally may presume that there will not be an adverse effect on the U.S. industrial base. However, when in doubt, the authorizing official should coordinate with the applicable subject matter expert specified in PGI 225.7703–2(b).

(2) Determinations may be made for an individual acquisition or a class of acquisitions meeting the criteria in paragraph (b)(1) of this subsection as follows:

(i) The head of the contacting activity is authorized to make a determination that applies to an individual acquisition with a value of less than $78.5 million.

(ii) The Director, Defense Procurement, Acquisition Policy, and Strategic Sourcing, and the following officials, without power of redelegation, are authorized to make a determination that applies to an individual acquisition with a value of $78.5 million or more or to a class of acquisitions:

(A) Defense Logistics Agency Component Acquisition Executive.

(B) Army Acquisition Executive.

(C) Navy Acquisition Executive.

(D) Air Force Acquisition Executive.

(3) The contracting officer—

(i) Shall include the applicable written determination in the contract file; and

(ii) Shall ensure that each contract action taken pursuant to the authority of a class determination is within the scope of the class determination, and shall document the contract file for each action accordingly.

(c) See PGI 225.7703–2(c) for formats for use in preparation of the determinations required by this subsection.

225.7703–3 Evaluating offers.

(a) Evaluate offers submitted in response to solicitations that include the provision at 252.225–7023, Preference for Products or Services from Iraq or Afghanistan, as follows:

(1) If the low offer is an offer of a product or service from Iraq or Afghanistan, award on that offer.

(2) If there are no offers of a product or service from Iraq or Afghanistan, award on the low offer.

(3) Otherwise, apply the evaluation factor specified in the solicitation to the low offer.

(i) If the price of the low offer of a product or service from Iraq or Afghanistan is less than the evaluated price of the low offer, award on the low offer of a product or service from Iraq or Afghanistan.

(ii) If the evaluated price of the low offer remains less than the low offer of a product or service from Iraq or Afghanistan, award on the low offer.

(b) If the provision at 252.225–7023 is modified to provide a preference exclusively for products or services from Iraq or Afghanistan, also modify the evaluation procedures in paragraph (a) of this subsection to remove ''or Afghanistan'' or ''Iraq or'', respectively, wherever the phrase appears.

225.7703–4 Reporting requirement.

The following organizations shall submit periodic reports to the Deputy Director, Program Acquisition and Contingency Contracting, Defense Procurement, Acquisition Policy, and Strategic Sourcing, in accordance with PGI 225.7703–4, to address the organization's use of the procedures authorized by this section:

(a) The Joint Contracting Command (Iraq/Afghanistan).

(b) The Department of the Army, except for contract actions reported by the Joint Contracting Command.

(c) The Department of the Navy.

(d) The Department of the Air Force.

(e) The Defense Logistics Agency.

(f) The other defense agencies and other DoD components that execute reportable contract actions.

225.7703–5 Solicitation provisions and contract clauses.

(a) Use the provision at 252.225–7023, Preference for Products or Services from Iraq or Afghanistan, in solicitations that provide a preference for products or services from Iraq or Afghanistan in accordance with 225.7703–1(a)(1). The contracting officer—

(1) May modify the provision to provide a preference exclusively for products or services from Iraq or exclusively for products or services from Afghanistan by removing ''or Afghanistan'' or ''Iraq or'', respectively, wherever the phrase appears in the provision. If this provision is so modified, the clause at 252.225–7024 shall be modified accordingly; and

(2) May modify the 50 percent evaluation factor in accordance with contracting office procedures.

(b) Use the clause at 252.225–7024, Requirement for Products or Services from Iraq or Afghanistan, in solicitations that include the provision at 252.225–7023, Preference for Products or Services from Iraq or Afghanistan, and in the resulting contract. If the provision at 252.225–7023 has been modified to provide a preference exclusively for Iraq or exclusively for Afghanistan, in accordance with paragraph (a)(1) of this subsection, the clause at 252.225–7024 shall be modified accordingly.

(c)(1) Use the clause at 252.225–7026, Acquisition Restricted to Products or Services from Iraq or Afghanistan, in solicitations and contracts that—

(i) Are restricted to the acquisition of products or services from Iraq or Afghanistan in accordance with 225.7703–1(a)(2); or

(ii) Will be directed to a particular source or sources from Iraq or Afghanistan in accordance with 225.7703–1(a)(3).

(2) The contracting officer may modify the clause to restrict the acquisition to products or services from Iraq, or to restrict the acquisition to products or services from Afghanistan, by removing ''or Afghanistan'' or ''Iraq or'', respectively, wherever the phrase appears in the clause.

(d) When the Trade Agreements Act applies to the acquisition, use the appropriate clause and provision as prescribed at 225.1101(6) and (7).

(e) Do not use any of the following provisions or clauses in solicitations or contracts that include the provision at

252.225–7023, the clause at 252.225–7024, or the clause at 252.225–7026:

(1) 252.225–7000, Buy American Act—Balance of Payments Program Certificate.

(2) 252.225–7001, Buy American Act and Balance of Payments Program.

(3) 252.225–7002, Qualifying Country Sources as Subcontractors.

(4) 252.225–7020, Trade Agreements Certificate.

(5) 252.225–7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.

(6) 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program.

(7) 252.225–7044, Balance of Payments Program—Construction Material.

(8) 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Section 252.225–7021 is amended by adding Alternate I to read as follows:

252.225–7021 Trade Agreements.

* * * * *

Alternate I (SEP 2008)

As prescribed in 225.1101(6)(ii), add the following paragraph (a)(14) to the basic clause and substitute the following paragraph (c) for paragraph (c) of the basic clause:

(a)(14) *Iraqi end product* means an article that—

(i) Is wholly the growth, product, or manufacture of Iraq; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Iraq into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only U.S.-made, qualifying country, Iraqi, or designated country end products unless—

(1) In its offer, the Contractor specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation; and

(2)(i) Offers of U.S.-made, qualifying country, Iraqi, or designated country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(ii) A national interest waiver has been granted.

■ 9. Sections 252.225–7022 through 252.225–7024 are added to read as follows:

252.225–7022 Trade Agreements Certificate—Inclusion of Iraqi End Products.

As prescribed in 225.1101(7), use the following provision:

TRADE AGREEMENTS CERTIFICATE—INCLUSION OF IRAQI END PRODUCTS (SEP 2008)

(a) *Definitions. Designated country end product, Iraqi end product, nondesignated country end product, qualifying country end product,* and *U.S.-made end product* have the meanings given in the Trade Agreements clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) Will consider only offers of end products that are U.S.-made, qualifying country, Iraqi, or designated country end products unless—

(i) There are no offers of such end products;

(ii) The offers of such end products are insufficient to fulfill the Government's requirements; or

(iii) A national interest waiver has been granted.

(c) *Certification and identification of country of origin.*

(1) For all line items subject to the Trade Agreements clause of this solicitation, the offeror certifies that each end product to be delivered under a contract resulting from this solicitation, except those listed in paragraph (c)(2) of this provision, is a U.S.-made, qualifying country, Iraqi, or designated country end product.

(2) The following supplies are other nondesignated country end products:

(*Country of Origin*)

(*Line Item Number*)

(End of provision)

252.225–7023 Preference for Products or Services from Iraq or Afghanistan.

As prescribed in 225.7703–5(a), use the following provision:

PREFERENCE FOR PRODUCTS OR SERVICES FROM IRAQ OR AFGHANISTAN (SEP 2008)

(a) *Definitions. Product from Iraq or Afghanistan* and service *from Iraq or Afghanistan,* as used in this provision, are defined in the clause of this solicitation entitled ''Requirement for Products or Services from Iraq or Afghanistan'' (DFARS 252.225–7024).

(b) *Representation.* The offeror represents that all products or services to be delivered under a contract resulting from this solicitation are products from Iraq or Afghanistan or services from Iraq or Afghanistan, except those listed in—

(1) Paragraph (c) of this provision; or

(2) Paragraph (c)(2) of the provision entitled ''Trade Agreements Certificate—Inclusion of Iraqi End Products,'' if included in this solicitation.

(c) *Other products or services.* The following offered products or services are not products from Iraq or Afghanistan or services from Iraq or Afghanistan:

(*Country of Origin*)

(*Line Item Number*)

(d) *Evaluation.* For the purpose of evaluating competitive offers, the Contracting Officer will increase by 50 percent the prices of offers of products or services that are not products or services from Iraq or Afghanistan.

(End of provision)

252.225–7024 Requirement for Products or Services from Iraq or Afghanistan.

As prescribed in 225.7703–5(b), use the following clause:

REQUIREMENT FOR PRODUCTS OR SERVICES FROM IRAQ OR AFGHANISTAN (SEP 2008)

(a) *Definitions.* As used in this clause—

(1) *Product from Iraq or Afghanistan* means a product that is mined, produced, or manufactured in Iraq or Afghanistan.

(2) *Service from Iraq or Afghanistan* means a service that is performed in Iraq or Afghanistan predominantly by citizens or permanent resident aliens of Iraq or Afghanistan.

(b) The Contractor shall provide only products from Iraq or Afghanistan or services from Iraq or Afghanistan under this contract, unless, in its offer, it specified that it would provide products or services other than products from Iraq or Afghanistan or services from Iraq or Afghanistan.

(End of clause)

■ 10. Section 252.225–7026 is added to read as follows:

252.225–7026 Acquisition Restricted to Products or Services from Iraq or Afghanistan.

As prescribed in 225.7703–5(c), use the following clause:

ACQUISITION RESTRICTED TO PRODUCTS OR SERVICES FROM IRAQ OR AFGHANISTAN (SEP 2008)

(a) *Definitions.* As used in this clause—

(1) *Product from Iraq or Afghanistan* means a product that is mined, produced, or manufactured in Iraq or Afghanistan.

(2) *Service from Iraq or Afghanistan* means a service that is performed in Iraq or Afghanistan predominantly by citizens or permanent resident aliens of Iraq or Afghanistan.

(b) The Contractor shall provide only products from Iraq or Afghanistan or services from Iraq or Afghanistan under this contract.

(End of clause)

252.225–7032 [Amended]

■ 11. Section 252.225–7032 is amended in the introductory text by removing ''225.1101(7)'' and adding in its place ''225.1101(8)''.

252.225–7033 [Amended]

■ 12. Section 252.225–7033 is amended in the introductory text by removing ''225.1101(8)'' and adding in its place ''225.1101(9)''.

252.225–7035 [Amended]

■ 13. Section 252.225–7035 is amended in the introductory text and in Alternate I by removing ''225.1101(9)'' and adding in its place ''225.1101(10)''.

252.225–7036 [Amended]

■ 14. Section 252.225–7036 is amended in the introductory text and in Alternate I by removing ''225.1101(10)'' and adding in its place ''225.1101(11)''.

[FR Doc. E8–21376 Filed 9–12–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 237

RIN 0750–AG04

Defense Federal Acquisition Regulation Supplement; Limitation on Service Contracts for Military Flight Simulators (DFARS Case 2008–D013)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 883(b) of the National Defense Authorization Act for Fiscal Year 2008. Section 883(b) changed the conditions under which DoD may waive the prohibition on entering into a service contract to acquire a military flight simulator.

DATES: *Effective Date:* September 15, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0302; facsimile 703–602–7887. Please cite DFARS Case 2008–D013.

SUPPLEMENTARY INFORMATION:

A. Background

Section 832 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364) established a prohibition on the award of a DoD service contract for the acquisition of a military flight simulator, unless the Secretary of Defense determines that a waiver is necessary for national security purposes and provides an economic analysis to the congressional defense committees. This prohibition and the waiver authority are implemented at DFARS 237.102–71.

Section 883(b) of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181) amended the conditions for waiver in Section 832 of Public Law 109–364 by replacing ''necessary for national security purposes'' with ''in the national interest''. This final rule amends DFARS 237.102–71 to reflect the change made by Section 883(b) of Public Law 110–181.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment under 41 U.S.C. 418b is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2008–D013.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 237

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 237 is amended as follows:

PART 237—SERVICE CONTRACTING

■ 1. The authority citation for 48 CFR part 237 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 237.102–71 is amended by revising paragraph (b) introductory text and paragraph (b)(1) to read as follows:

237.102–71 Limitation on service contracts for military flight simulators.

* * * * *

(b) Under Section 832 of Public Law 109–364, as amended by Section 883(b) of Public Law 110–181, DoD is prohibited from entering into a service contract to acquire a military flight simulator. However, the Secretary of Defense may waive this prohibition with respect to a contract, if the Secretary—

(1) Determines that a waiver is in the national interest; and

* * * * *

[FR Doc. E8–21374 Filed 9–12–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 237

RIN 0750–AF64

Defense Federal Acquisition Regulation Supplement; Security-Guard Functions (DFARS Case 2006–D050)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 343 of the National Defense Authorization Act for Fiscal Year 2008. Section 343 extends, through September 30, 2012, the period during which contractor performance of security-guard functions at military installations or facilities is authorized to fulfill additional requirements resulting from the terrorist attacks on the United States on September 11, 2001.

DATES: *Effective date:* September 15, 2008.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before November 14, 2008, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D050, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include DFARS Case 2006–D050 in the subject line of the message.
- *Fax:* 703–602–7887.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Michael Benavides, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

• *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Benavides, 703–602–1302.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 72 FR 51192 on September 6, 2007, to implement Section 333 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364). Section 333 extended, through September 30, 2009, the period during which contractor performance of security-guard functions at military installations or facilities is authorized to fulfill additional requirements resulting from the terrorist attacks on the United States on September 11, 2001, provided the total number of personnel employed to perform such functions does not exceed specified limits. DoD received no comments on the interim rule published on September 6, 2007.

Section 343 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181) further extended the period during which contractor performance of security-guard functions at military installations or facilities is authorized, and established corresponding personnel limitations. This second interim rule amends DFARS 237.102–70 to reflect the provisions of Section 343 of Public Law 110–181.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Although the rule may provide opportunities for small business concerns to receive contracts for the performance of security-guard functions at military installations or facilities, the economic impact is not expected to be substantial. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006–D050.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 343 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). Section 343 extends, through September 30, 2012, the period during which contractor performance of security-guard functions at military installations or facilities is authorized to fulfill additional requirements resulting from the terrorist attacks on the United States on September 11, 2001. Section 343 also places limitations on the total number of personnel that may be employed annually under this authority. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 237

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 237 is amended as follows:

PART 237—SERVICE CONTRACTING

■ 1. The authority citation for 48 CFR Part 237 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 237.102–70 is amended by revising paragraph (d)(1) introductory text and paragraphs (d)(1)(iii) and (iv) to read as follows:

237.102–70 Prohibition on contracting for firefighting or security-guard functions.

* * * * *

(d)(1) Under Section 332 of Public Law 107–314, as amended by Section 333 of Public Law 109–364 and Section 343 of Public Law 110–181, this prohibition does not apply to any contract that is entered into for any increased performance of security-guard functions at a military installation or facility undertaken in response to the terrorist attacks on the United States on September 11, 2001, if—

* * * * *

(iii) Contract performance will not extend beyond September 30, 2012; and

(iv) The total number of personnel employed to perform security-guard functions under all contracts entered into pursuant to this authority does not exceed the following limitations:

(A) For fiscal year 2007, the total number of such personnel employed under such contracts on October 1, 2006.

(B) For fiscal year 2008, the number equal to 90 percent of the total number of such personnel employed under such contracts on October 1, 2006.

(C) For fiscal year 2009, the number equal to 80 percent of the total number of such personnel employed under such contracts on October 1, 2006.

(D) For fiscal year 2010, the number equal to 70 percent of the total number of such personnel employed under such contracts on October 1, 2006.

(E) For fiscal year 2011, the number equal to 60 percent of the total number of such personnel employed under such contracts on October 1, 2006.

(F) For fiscal year 2012, the number equal to 50 percent of the total number of such personnel employed under such contracts on October 1, 2006.

* * * * *

[FR Doc. E8–21373 Filed 9–12–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 080302357–8834–02]

RIN 0648–AT79

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Explosive Removal of Offshore Structures in the Gulf of Mexico

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

ACTION: Final rule, correction.

SUMMARY: This document contains a correction to the final rule governing the taking of marine mammals incidental to the explosive removal of offshore structures in the Gulf of Mexico that was published in the **Federal Register** on Thursday June 19, 2008.

DATES: This correction is effective on September 15, 2008.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, NMFS, at 301–713–2289, ext 128.

SUPPLEMENTARY INFORMATION: The final rule that is the subject of this correction was published on Thursday, June 19, 2008 (73 FR 34875). That final rule contains an inadvertent error in the amendatory instruction concerning the removal of subpart R in 50 CFR part 216.

Subpart R governs the taking of marine mammals incidental to construction and operation of offshore oil and gas facilities in the Beaufort Sea. That rule was published in the **Federal Register** on March 7, 2006 (71 FR 11322), became effective on April 6, 2006, and remains in effect until April 6, 2011. The instruction that it should be ''added and reserved'' is in error because Subpart R exists, and will remain in effect until April 6, 2011. In addition, the amendatory instruction is not an allowable instruction under **Federal Register** format rules. Therefore, this rule removes this instruction as it is confusing to the public and is an action that was not intended by NMFS.

Classification

E.O. 12866: This final rule has been determined to be not significant under E.O. 12866.

Administrative Procedure Act (APA): The Assistant Administrator (AA) for Fisheries finds good cause under 5 U.S.C. 553 (b)(B) to waive notice and opportunity for public comments as it is contrary to the public interest. The final rule published on Thursday, June 19, 2008 (73 FR 34875) contained an inadvertent error in the amendatory instruction concerning the removal of subpart R in 50 CFR part 216. The amendatory instruction concerning the removal of subpart R in Part 216 indicated that this subpart should be ''added and reserved,'' which was an action that was not intended by NMFS, and is not an allowable instruction under **Federal Register** format rules. As reflected in the rule that implemented the provisions of subpart R (March 7, 2006, 71 FR 11322), NMFS intended these regulations to remain in effect until April 6, 2011. In order to comply with **Federal Register** format rules and to avoid any confusion, this rule amends the June 19, 2008 final rule to delete the amendatory instruction concerning subpart R.

The AA finds good cause under 5 U.S.C. 553(d) to waive the 30–day delay in effectiveness. As stated above, NMFS included a confusing and unallowable **Federal Register** instruction concerning subpart R in the June 19, 2008 final rule. As stated in its March 7, 2006 rule, NMFS intended subpart R to remain in effect until April 6, 2011. In order to prevent further confusion regarding the status of subpart R, the AA makes this rule effective immediately.

Correction

The following is a correction to FR Doc. E8–13898, June 19, 2008:

■ 1. On page 34889 in the third column, Instruction 2, reading ''Subpart R is added and reserved.'' is hereby removed.

■ 2. On page 34889 in the third column, Instruction 3 is hereby redesignated as Instruction 2.

Dated: September 8, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E8–21479 Filed 9–12–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 071004577–8124–02]

RIN 0648–XJ76

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Inseason Action to allow use of the Ruhle Trawl in the Eastern U.S./Canada Area

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

ACTION: Temporary rule; gear restriction.

SUMMARY: NMFS announces that the Administrator, Northeast (NE) Region, NMFS (Regional Administrator) has authorized the use of an additional type of fishing gear for use by vessels fishing under a Northeast (NE) multispecies Category A Day-at-Sea (DAS) in the Eastern U.S./Canada Area. This action is authorized by the regulations implementing Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) and is intended to prevent under-harvesting of the Total Allowable Catch (TAC) for Eastern Georges Bank (GB) haddock while ensuring that the TAC of Eastern GB cod and GB yellowtail flounder will not be exceeded during the 2008 fishing year (FY). This action is being taken to provide additional opportunities for vessels to fully harvest the Eastern GB haddock TAC under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective September 15, 2008, through April 30, 2009.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, (978) 281–9341.

SUPPLEMENTARY INFORMATION: On July 14, 2008, NMFS published a final rule in the **Federal Register** (73 FR 40186) approving the use of the Haddock Rope Trawl by vessels participating in either the Regular B-DAS Program or the Eastern U.S./Canada Haddock Special Access Program (SAP). A subsequent rule (73 FR 52214) renamed the Haddock Rope Trawl the ''Ruhle Trawl'' in honor of the late Captain Phil Ruhle, Sr., who was instrumental in its development.

Under the regulations implementing Amendment 13 to the NE Multispecies FMP, vessels fishing with trawl gear in the Eastern U.S./Canada Area must fish with either a haddock separator trawl, a flounder trawl net, or other gear approved by the Regional Administrator. The regulations at § 648.85(a)(3)(iv)(D) allow the Regional Administrator to modify these gear requirements through an in-season action in order to prevent over-harvesting or to facilitate achieving the TAC. This action approves the use of the Ruhle Trawl as a third authorized gear type for the remainder of FY 2008.

In each of the last 3 years, the Eastern U.S./Canada Area has been closed before the end of the fishing year because the TAC of either Eastern GB cod or GB yellowtail flounder had been harvested. During that period, the harvest of Eastern GB haddock has not exceeded 10 percent of the TAC. Based on current rates of harvest, a similar under-harvest of Eastern GB haddock appears likely in FY 2008. Scientific studies have demonstrated that the Ruhle Trawl is able to reduce bycatch of cod and yellowtail flounder while targeting haddock at least as effectively as the haddock separator trawl, and better then the flounder trawl net. Allowing the use of the Ruhle Trawl in the Eastern U.S./Canada Area is expected to increase landings of Eastern GB haddock, reduce discards of Eastern GB cod and GB yellowtail flounder by vessels targeting GB haddock, and result in the achievement of the Eastern GB haddock TAC during the fishing year, without exceeding it.

To encourage the use of this gear in the most selective manner, vessels

fishing with the Ruhle Trawl under a Category A DAS in the Eastern U.S./Canada Area are subject to the same gear performance incentives (i.e., bycatch possession restrictions) that currently apply to vessels fishing with the haddock separator trawl. The performance incentives limit possession of flounders (all species combined), monkfish, and skates to 500 lb (226.8 kg) (whole weight) each (i.e., no more than 500 lb (226.8 kg) of all flounders, no more than 500 lb (226.8 kg) of monkfish, and no more than 500 lb (226.8 kg) of skates), and prohibits possession of lobsters. Possession limits for other species are the same as those for any vessel fishing under an A DAS in the Eastern U.S./Canada Area.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), there is good cause to waive prior notice and opportunity for public comment, as well as the delayed effectiveness for this action, because prior notice and comment and a delayed effectiveness would be impracticable and contrary to the public interest. This action would allow fishermen additional flexibility by authorizing an additional gear type for all NE multispecies DAS vessels using trawl gear in the Eastern U.S./Canada Area through April 30, 2009, to facilitate the harvest of the TAC for Eastern GB haddock while ensuring that the TAC will not be exceeded during FY 2008. This will likely result in increased harvest of Eastern GB haddock, decreased regulatory discards of Eastern GB cod and GB yellowtail flounder by vessels targeting Eastern GB haddock, increased revenue for the NE multispecies fishery, and an increased chance of achieving optimum yield (OY) in the groundfish fishery.

This action is authorized by the regulations at § 648.85(a)(3)(iv)(D) to facilitate achieving the U.S./Canada Area TACs. It is important to take this action immediately because the current restrictive gear requirements have prevented the NE multispecies fishery from effectively harvesting the Eastern GB haddock TAC at a rate that would result in complete harvest by the end of FY 2008. Delay in the implementation of this action would likely result in underharvest of the Eastern GB haddock TAC, wasteful discards of Eastern GB cod and GB yellowtail flounder by vessels targeting Eastern GB haddock, and potentially the premature closure of the Eastern U.S./Canada Area due to the harvest of either the GB yellowtail flounder TAC or Eastern GB cod TAC, resulting in decreased economic opportunity for vessel owners, and a decreased likelihood of achieving OY.

The time necessary to provide for prior notice, opportunity for public comment, and delayed effectiveness for this action would prevent NE multispecies DAS vessels from efficiently targeting Eastern GB haddock in the U.S./Canada Area. The Regional Administrator's authority to authorize additional gear types in the Eastern U.S./Canada Area to help ensure that the shared U.S./Canada stocks of fish are harvested, but not exceeded, was considered and open to public comment during the development of both Amendment 13 and Framework Adjustment 42. Further, the Ruhle Trawl is currently permissible gear in all other parts of the NE multispecies trawl fishery under an A DAS and was recently approved as an additional gear in the Regular B DAS Program and in the Eastern U.S./Canada Haddock Special Access Program, two programs that allow the use of Category B DAS. Its use in the Eastern U.S./Canada Area is consistent with the New England Fishery Management Council's publicly stated intention to promote the use of this gear. Therefore, any negative effect the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

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

Dated: September 10, 2008.

James P. Burgess,

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

[FR Doc. E8–21487 Filed 9–12–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XK53

Fisheries of the Exclusive Economic Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear 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 species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the 2008 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 11, 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 2008 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA is 800 metric tons as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008), for the period 1200 hrs, A.l.t., January 20, 2008, through 1200 hrs, A.l.t., October 1, 2008. The 2008 Pacific halibut bycatch allowance for the deep-water species fishery was reduced because 170 mt of this apportionment was allocated to vessels participating in the Rockfish Pilot Program, as listed at *http://www.fakr.noaa.gov/sustainablefisheries/goarat/08rppallocations.xls*.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the 2008 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery include sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder. This closure does not apply to fishing by vessels participating in the cooperative fishery in the Rockfish Pilot Program for the Central GOA.

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

Classification

This action responds to the best available information recently obtained

from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the deep-water species fishery by vessels using trawl gear in 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 9, 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 § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: September 10, 2008.

James P. Burgess,

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

[FR Doc. E8–21465 Filed 9–10–08; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 179
Monday, September 15, 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 COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Initiation of Review of Management Plan/Regulations of the Olympic Coast National Marine Sanctuary; Intent To Prepare Draft Environmental Impact Statement and Management Plan; Scoping Meetings

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Initiation of Review of Management Plan/Regulations; Intent to Prepare Environmental Impact Statement; Scoping Meetings.

SUMMARY: Olympic Coast National Marine Sanctuary (OCNMS or sanctuary) was designated in May 1994. It spans 3,310 square miles of marine waters off the rugged Olympic Peninsula coast, covering much of the continental shelf and the heads of several major submarine canyons. The present management plan was written as part of the sanctuary designation process and published in the Final Environmental Impact Statement in 1993. In accordance with Section 304(e) of the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 *et seq.*), the Office of National Marine Sanctuaries (ONMS) of the National Oceanic and Atmospheric Administration (NOAA) is initiating a review of the OCNMS management plan, to evaluate substantive progress toward implementing the goals for the Sanctuary, and to make revisions to the plan and regulations as necessary to fulfill the purposes and policies of the NMSA. NOAA will conduct public scoping meetings to gather information and other comments from individuals, organizations, tribes, and government agencies on the scope, types and significance of issues related to the Sanctuary's management plan and regulations. The scoping meetings are scheduled as detailed below.

DATES: Written comments should be received on or before November 14, 2008.

Scoping meetings will be held on:

(1) September 29, 6–9 p.m., Peninsula College Longhouse, South Campus, Port Angeles, WA.
(2) September 30, 6–9 p.m., Makah Marina Conference Center, Bay-view Ave, Neah Bay, WA.
(3) October 1, 6–9 p.m., A-Ka-Lat Center, La Push Road, La Push, WA.
(4) October 2, 6–9 p.m., Ocean Shores Convention Center, 120 W Chance a La Mer, NW., Ocean Shores, WA.
(5) October 3, 6–9 p.m., Westport Maritime Museum, 2201 Westhaven Drive, Westport, WA.
(6) October 4, 2–5 p.m., Governor Hotel, Washington Room, 621 S. Capitol Way, Olympia, WA.
(7) October 5, 7–10 p.m., Seattle Aquarium, Pier 59, 1483 Alaskan Way, Seattle, WA.

ADDRESSES: Written comments may be sent to the Olympic Coast National Marine Sanctuary (Management Plan Review), 115 Railroad Ave. East, Suite 301, Port Angeles, WA 98362, or faxed to (360) 457–8496. Electronic comments may be sent to *ocnmsmanagementplan@noaa.gov.*

Comments will be available for public review at the street address mentioned above. All comments received are a part of the public record. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NOAA will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, Wordperfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: George Galasso, 360.457.6622 Ext. 12, *ocnmsmanagementplan@noaa.gov.*

SUPPLEMENTARY INFORMATION: The proposed revised management plan will likely involve changes to existing policies of the Sanctuary in order to address contemporary issues and challenges, and to better protect and manage the Sanctuary's resources and qualities. The review process is composed of four major stages: (1) Information collection and characterization; (2) preparation and release of a draft management plan/environmental impact statement, and any proposed amendments to the regulations; (3) public review and comment; (4) preparation and release of a final management plan/environmental impact statement, and any final amendments to the regulations. In the event that the potential impacts of new actions described in the management plan do not warrant the need for an Environmental Impact Statement, NOAA will publish the appropriate environmental analysis and notify the public. NOAA anticipates completion of the revised management plan and concomitant documents will require approximately thirty-six months.

Preliminary Priority Topics

NOAA, in consultation with the Intergovernmental Policy Council (State of Washington and the Coastal Treaty Tribes who have jurisdiction of resources within the sanctuary), has prepared a list of preliminary priority topics. This list represents our best professional judgment of the most important issues NOAA should consider in preparation of a new OCNMS management plan. We are interested in the public's comments on these topics, as well as any other topics of interest to the public or other agencies. It is important to note that this list does not preclude or in any way limit the consideration of additional topics raised through public comment, government-to-government consultations, and discussions with partner agencies.

Improved Partnerships—Recent initiatives for regional ocean management, including the formation of the Olympic Coast Intergovernmental Policy Council (IPC), the Washington Ocean Action Plan and the West Coast Governors Agreement on Ocean Health, provide the sanctuary with new opportunities to strengthen partnerships, particularly with the four coastal treaty tribes and the state of Washington in their role as governments. The sanctuary will work in active partnership to provide a more transparent, cooperative and coordinated management structure of Olympic Coast marine resources within tribal, state and federal jurisdictions.

Characterization and Monitoring—There is a need to develop an understanding of baseline conditions of marine resources within the sanctuary, ecosystem functions, and status and trends of biological and socioeconomic resources to effectively inform management. OCNMS, in conjunction with IPC and other entities, will work to resolve these needs.

Spill Prevention, Contingency Planning and Response—The risk from vessel traffic and other hazards remains a significant threat to marine resources. The potential for a catastrophic oil spill remains a primary concern and while advances in maritime safety have been made since the sanctuary was designated, better coordination is needed for response to these threats. Oil spills cause immediate and potentially long-term harm to marine resources as well as socioeconomic impacts to coastal communities.

Climate Change—Climate change is widely acknowledged, yet there is considerable uncertainty about current and future consequences at local, ecosystem and oceanic scales. Increased coordination and cooperation among resource management agencies is required to improve planning, monitoring and adaptive management to address this phenomenon.

Ocean Literacy—Enhancing the public's awareness and appreciation of marine, socio-economic, and cultural resources is a cornerstone of the sanctuary's mission. Recent regional initiatives offer opportunities for the sanctuary, in conjunction with IPC and other entities, to expand educational contributions and reach a larger audience.

Marine Debris—Coastal marine debris is a persistent and poorly diagnosed problem within the sanctuary that negatively impacts natural and socioeconomic resources and qualities.

Condition Report

In preparation for management plan review, NOAA has produced an Olympic Coast National Marine Sanctuary 2008 Condition Report. The Condition Report provides a summary of resources in OCNMS, pressures on those resources, the current condition and trends, and management responses to the pressures that threaten the integrity of the marine environment. Specifically, the Condition Report includes information on the status and trends of water quality, habitat, living resources and maritime archaeological resources and the human activities that affect them. The report serves as a supporting document for the Management Plan Review Process, to inform constituents who desire to participate in that process.

Additionally, the Olympic Coast Intergovernmental Policy Council (IPC) has requested that an IPC authored addendum be distributed with the Condition Report. The IPC is composed of the state of Washington, the Hoh, Makah, Quileute Indian Tribes and Quinault Indian Nation, and was formed to provide a forum for resource managers to exchange information, coordinate policies, and develop recommendations for resource management within the sanctuary.

The Hoh, Makah, Quileute Indian Tribes and Quinault Indian Nation signed treaties with the U.S. government and exist as domestic sovereigns. Since the affirmation of treaty fishing rights in *U.S.* v. *Washington*, tribal, state and federal governments developed a unique management approach for fisheries in western Washington. This addendum explains this co-management approach, its underlying legal framework, and Washington Coastal Treaty Tribes' historic and present use of marine resources.

The condition report and the IPC addendum will be made available to the general public in advance of scoping meetings and on the Internet at: *http://sanctuaries.noaa.gov/science/condition/welcome.html.*

Scoping Comments

Scoping meetings provide an opportunity to make direct comments to NOAA on the management of the sanctuary's natural and cultural resources, including administrative programs. We encourage the public to participate and welcome any comments related to the sanctuary. In particular, we are interested in hearing about the public's view on:

- The sanctuary's potential management priorities for the next five to ten years.
- Effectiveness of the existing management plan in protecting sanctuary resources.
- Sanctuary programs, activities and needs, including but not limited to resource protection programs, research and monitoring programs, education, volunteer, and outreach programs.
- Implementation of regulations and permits.
- Adequacy of existing boundaries to protect sanctuary resources.
- Assessment of the existing operational and administrative framework (staffing, offices, vessels, etc.).

Authority: 16 U.S.C. 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program).

Dated: September 4, 2008.

Daniel J. Basta,

Director for the Office of National Marine Sanctuaries.

[FR Doc. E8–21489 Filed 9–12–08; 8:45 am]

BILLING CODE 3510–NK–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2008–0593–200818b; FRL–8714–6]

Approval and Promulgation of Implementation Plans Alabama: Volatile Organic Compounds and Open Burning

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of revisions to the Alabama State Implementation Plan (SIP), submitted by the Alabama Department of Environmental Management on January 8, 2008. The revisions include modifications to Alabama's Volatile Organic Compounds and Control of Open Burning and Incineration regulations, found at Alabama Administrative Code Chapters 335–3–1 and 335–3–3, respectively. This proposed action is being taken pursuant to section 110 of the Clean Air Act.

This SIP revision also contains a letter addressing the requirements of section 110(a)(2)(D)(i), which EPA will consider separately.

DATES: Written comments must be received on or before October 15, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. ''EPA–R04–OAR–2008–0593,'' by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail: harder.stacy@epa.gov*.
3. *Fax:* 404–562–9019.
4. *Mail:* ''EPA–R04–OAR–2008–0593,'' 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. Stacy Harder, 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. Such deliveries are only accepted during the

Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Ms. Stacy Harder, 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. The telephone number is (404) 562–9042. Ms. Harder can also be reached via electronic mail at *harder.stacy@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: September 4, 2008.

Russell L. Wright, Jr.,

Acting Regional Administrator, Region 4.

[FR Doc. E8–21313 Filed 9–12–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2008–0614; FRL–8713–9]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the Missouri State Implementation Plan (SIP) and Operating Permits Program. EPA proposes to approve a revision to the Missouri rule entitled ''Submission of Emission Data, Emission Fees, and Process Information.'' These revisions will establish emission fees for the Missouri facilities as required annually, align state rule reporting requirements with the Federal Consolidated Emission Reporting Rule, and decrease the required Emissions Inventory Questionnaire reporting frequency for affected installations.

DATES: Comments on this proposed action must be received in writing by October 15, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2008–0614, by mail to Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Amy Algoe-Eakin at (913) 551–7942, or by e-mail at *algoe-eakin.amy@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision and Title V revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: September 4, 2008.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E8–21183 Filed 9–12–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2008–0154; FRL–8715–8]

RIN 2060–AO13

Revision of Source Category List for Standards Under Section 112(k) of the Clean Air Act; and National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is revising the area source category list by changing the name of the ferroalloys production category to clarify that it includes all types of ferroalloys. We are also adding two additional products (calcium carbide and silicon metal) to the source category. Because calcium carbide and silicon metal production involve the use of equipment and processes similar to those employed in ferroalloy production, we are proposing to address these two products as part of the ferroalloys production category. EPA is also proposing national emissions standards for control of hazardous air pollutants for area source ferroalloys production facilities. The proposed emissions standards for new and existing sources are based on EPA's proposed determination as to what constitutes the generally available control technology (GACT) or management practices for the source category. We are proposing to exempt the ferroalloys production area source categories from title V permitting requirements.

DATES: Comments must be received on or before October 15, 2008, unless a public hearing is requested by September 25, 2008. If a hearing is requested on these proposed rules, written comments must be received by October 30, 2008. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by the Office of Management and Budget (OMB) on or before October 15, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2008–0154. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is

restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Area Source National Emission Standards for Hazardous Air Pollutants (NESHAP) for Ferroalloys Production Facilities Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202)566–1742.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0154. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: Mr. Conrad Chin, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (D243–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–1512; fax number: (919) 541–3207; e-mail address: *chin.conrad@epa.gov.*

SUPPLEMENTARY INFORMATION: *Outline.* The information in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. What should I consider as I prepare my comments to EPA?
C. Where can I get a copy of this document?
D. When would a public hearing occur?
II. Background Information for Proposed Area Source Standards.
A. What is the statutory authority and regulatory approach for these proposed standards?
B. What source category is affected by these proposed standards?
C. What are the production operations, emission sources, and available controls?
D. What existing federal standards apply to ferroalloys production?
III. Revision to the Source Category List
IV. Summary of Proposed Requirements
A. Do these proposed standards apply to my source?
B. When must I comply with these proposed standards?
C. What are these proposed standards?
D. What are the initial and subsequent testing requirements?
E. What are the monitoring requirements?
F. What are the notification, recordkeeping, and reporting requirements?
V. Rationale for this Proposed Rule
A. How did we select the source category?
B. How did we select the affected source?
C. How did we address the ferroalloys production metal HAP in this proposed rule?
D. How was GACT determined?
E. How did we select the compliance requirements?
F. How did we decide to exempt this are source category from title V permit requirements?
VI. Summary of Impacts of these Proposed Standards
VII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does this action apply to me?

The regulated categories and entities potentially affected by the proposed standards include:

Category	NAICS code [1]	Examples of regulated entities
Industry:		
Electrometallurgical Ferroalloy Product Manufacturing	331112	Area source facilities that manufacture ferroalloys.
Primary Smelting and Refining of Nonferrous Metal (except Copper and Aluminum).	331419	Area source facilities that manufacture silicon metal.
All Other Basic Inorganic Chemical Manufacturing	325188	Area source facilities that manufacture calcium carbide.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this proposed action. To determine whether your facility would be regulated by this proposed action, you should examine the applicability criteria in 40 CFR 63.11393 of subpart YYYYYY (National Emission Standards for Hazardous Air Pollutants (NESHAP) for Area Sources: Ferroalloys Production Facilities). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. What should I consider as I prepare my comments to EPA?

Do not submit information containing CBI to EPA through *www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, Environmental

Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID EPA–HQ–OAR–2008–0154. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

D. When would a public hearing occur?

If anyone contacts EPA requesting to speak at a public hearing concerning these proposed rules by September 25, 2008, we will hold a public hearing on September 30, 2008. If you are interested in attending the public hearing, contact Ms. Pamela Garrett at (919) 541–7966 to verify that a hearing will be held. If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, Research Triangle Park, NC, or an alternate site nearby.

II. Background Information for Proposed Area Source Standards

A. What is the statutory authority and regulatory approach for these proposed standards?

Section 112(d) of the Clean Air Act (CAA) requires us to establish NESHAP for both major and area sources of hazardous air pollutants (HAP) that are listed for regulation under CAA section 112(c). A major source emits or has the potential to emit 10 tons per year (tpy) or more of any single HAP or 25 tpy or more of any combination of HAP. An area source is a stationary source that is not a major source.

Section 112(k)(3)(B) of the CAA calls for EPA to identify at least 30 HAP which, as the result of emissions from area sources, pose the greatest threat to public health in the largest number of urban areas. EPA implemented this provision in 1999 in the Integrated Urban Air Toxics Strategy, (64 FR 38715, July 19, 1999). Specifically, in the Strategy, EPA identified 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the ''30 urban HAP.'' Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation. We also implemented these requirements through the Strategy. A primary goal of the Strategy is to achieve a 75 percent reduction in cancer incidence attributable to HAP emitted from stationary sources.

Under CAA section 112(d)(5), we may elect to promulgate standards or requirements for area sources ''which provide for the use of GACT or management practices by such sources to reduce emissions of hazardous air pollutants.'' Additional information on GACT is found in the Senate report on the legislation (Senate Report Number 101–228, December 20, 1989), which describes GACT as:

> * * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

Consistent with the legislative history, we can consider costs and economic impacts in determining GACT, which is particularly important when developing regulations for source categories like this one that have a majority of small businesses.

Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category at issue. Finally, as noted above, in determining GACT for a particular area source category, we consider the costs and economic impacts of available control technologies and management practices on that category.

We are proposing these national emission standards in response to a court-ordered deadline that requires EPA to issue standards for 10 source categories listed pursuant to section 112(c)(3) and (k) by December 15, 2008 (Sierra Club v. Johnson, no. 01–1537, D.D.C., March 2006). Other rulemakings will include standards for the remaining source categories that are due in December 2008.

B. What source categories are affected by these proposed standards?

We listed the ferroalloys source category under CAA section 112(c)(3) in one of a series of amendments (November 22, 2002, 67 FR 70427) to the original source category list included in the 1999 Integrated Urban Strategy. The inclusion of this source category on the section 112(c)(3) area source category list is based on 1990 emissions data, as EPA used 1990 as the baseline year for that listing. Ferroalloys production was listed for its contributions toward meeting the 90 percent requirement of chromium compounds, manganese compounds, and nickel compounds.

Based on current information, we believe that there are 10 facilities currently operating that would be subject to the proposed area source standards. Seven of these facilities are considered bulk ferroalloy producers, meaning that they use large electric arc furnaces (EAF) and typically produce anywhere from 8,000 tpy of product per furnace up to over 100,000 tpy of product per furnace. Two of these facilities currently produce ferrosilicon; three produce silicon metal; and two produce calcium carbide. There are also three specialty ferroalloy producers. These producers use small EAF or other small reaction vessels with lower throughput rates, typically around 10,000 tpy or less for total plant-wide production of ferrovanadium and/or ferromolybdenum. All of these facilities are well controlled as a result of State standards and permitting requirements and regulations issued under other sections of the CAA.

C. What are the production operations, emission sources, and available controls?

Bulk ferroalloys are produced using submerged EAF, which are furnaces in which the electrodes are submerged into the charge. Submerged EAF are

predominately characterized by their energy rating and design-type. Furnace design capacities typically range from 10 megawatts (MW) to 50 MW. Submerged EAF are classified as open, semi-sealed, or sealed, depending on their cover configuration.

The submerged arc process is a reduction smelting operation. The reactants consist of metallic ores (e.g., ferrous oxides, silicon oxides, manganese oxides, chrome oxides) and a carbon-source reducing agent, usually in the form of coke, charcoal, high- and low-volatility coal, or wood chips. Limestone may also be added as a flux material. In the case of calcium carbide production, the raw materials are coke and lime. The raw materials are charged to the furnace and then smelted in the furnace. The molten product is tapped from the furnace periodically or continuously and then cast and allowed to harden before being crushed and sized to fit customer specifications.

Specialty ferroalloys such as ferromolybdenum and ferrovanadium use an exothermic (metallothermic) process to produce high-grade alloys with low-carbon content. The intermediate molten alloy used in the process may come directly from a submerged EAF (such as the case in ferrovanadium production at one plant) or from another type of heating device. Silicon or aluminum combines with oxygen in the molten alloy, resulting in a sharp temperature rise and strong agitation of the molten bath. Aluminum reduction is used to produce ferrovanadium and a mixed alumino/silico thermal process is used for producing ferromolybdenum. Exothermic processes are generally carried out in open vessels and tend to occur very quickly—sometimes within 5 to 10 minutes and up to 25 minutes. Once the reaction is initiated, it is self-perpetuating until all of the charge is used up.

The electrometallurgical operation is the primary source of potential metal HAP emissions at the plant, and all processes have capture systems to capture the emissions, which are ducted to control devices. Emission points are primary emissions (from the combustion zone at the top of the furnace or other vessel), tapping emissions when molten product is poured into a ladle for transfer to the casting area, and fugitive emissions from the furnace.

The metallic HAP and any condensable organics are controlled by particulate matter (PM) control devices, primarily fabric filters and scrubbers.

D. What existing federal standards apply to ferroalloys production?

As described in 40 CFR 60.260, subpart Z, the new source performance standards (NSPS) for ferroalloys production facilities apply to the following sources: ''Electric submerged arc furnaces which produce silicon metal, ferrosilicon, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon, or calcium carbide; and dust-handling equipment.'' Any new or reconstructed sources constructed after October 21, 1974, are subject to this proposed rule.

As described in 40 CFR 63.1650, subpart XXX, the major source NESHAP applies to the following sources: ''All new and existing ferromanganese and silicomanganese production facilities that manufacture ferromanganese or silicomanganese and are major sources, or are co-located at major sources of hazardous air pollutant emissions.''

Sources that would be subject to this proposed area source rule are subject to the NSPS if they have a new or reconstructed furnace. However, sources that are subject to the major source NESHAP would not be covered by this proposed area source rule.

III. Revision to the Source Category List

This proposed rule announces a revision to the area source category list developed under our Integrated Urban Air Toxics Strategy pursuant to CAA section 112(c)(3). The revision includes changing the name of the source category to clarify that it includes all types of ferroalloys and adding two additional products (calcium carbide and silicon metal) to the source category.

Specifically, the revision changes the name of the listed area source category, from ''Ferroalloys Production: Ferromanganese and Silicomanganese.'' to ''Ferroalloys Production Facilities.'' We are making this revision to clarify that the source category includes all types of ferroalloys. This is simply a change in the name of the source category and does not change the universe of sources that were the basis of the area source inventory. The underlying 1990 emissions inventory was based on data derived from the Toxics Release Inventory for the standard industrial classification (SIC) 3313, Electrometallurgical Products, except Steel. The U.S. Department of Labor defines this SIC as follows:

> Establishments primarily engaged in manufacturing ferro and nonferrous metal additive alloys by electrometallurgical or metallothermic processes, including high percentage ferroalloys and high percentage nonferrous additive alloys.

This SIC definition lists several products, including ferromanganese, ferromolybdenum, ferrosilicon, ferrotitanium and ferrovanadium. Therefore, this name change is being made to be consistent with the scope of facilities that formed the basis of the original listing.

The source category list should be clarified regarding ferrotitanium production, however. There are two processes available to produce ferrotitanium. One is properly covered by SIC 3313, because it is an electrometallurgical and metallothermic process. This process produces 35 percent ferrotitanium, but is only used today in Russia, China, Brazil, and India. There are no known domestic producers. This 35 percent grade product is produced using rutile ore and/or illmenite ore, and aluminum is used as the reductant. It is an endothermic reaction that requires external heat such as from an EAF. In summary, this process would be covered by SIC 3313 since it is an electrometallurgical and metallothermic operation that purifies and reduces a metal compound.

In contrast, the two existing domestic ferrotitanium producers use an induction melting process to produce a 70 percent grade ferrotitanium. This process uses scrap metal and is neither a reduction nor a purification process. These facilities were not intended to be covered in the section 112(k) inventory under this SIC code. Similarly, the same induction melting process is used to produce ferroaluminum, and this production process is not considered part of the ferroalloy production source category.

As described below, after examining the 1990 inventory and the metallurgical operations included in the inventory, we concluded that silicon metal production and calcium carbide production are appropriately covered by the ferroalloys production source category.

Silicon metal producers are covered by SIC 3339, Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum. Sources reporting to SIC 3339 were addressed in the section 112(k) inventory for the following metal HAP: Arsenic, cadmium, lead, manganese, and nickel. However, when the Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum source

category was listed, its scope was limited to zinc, cadmium and beryllium smelting.[1] The subsequent area source standards that were proposed and promulgated only address these sources. See 40 CFR part 63, Subpart GGGGGG–NESHAP for Primary Nonferrous Metals Area Sources-Zinc, Cadmium, and Beryllium. Silicon metal production uses virtually the same equipment and processes as ferroalloys, and was included in the NSPS. Because silicon metal production was not included in the Primary Nonferrous Metals NESHAP and because it was historically included in the ferroalloys production source category, we are proposing to include silicon metal production sources in the ferroalloys production source category.

Similarly, calcium carbide producers report to SIC code 2819, Industrial Inorganic Chemicals, Not Elsewhere Classified, which includes calcium carbide manufacturing. These data also formed the basis for the section 112(k) inventory and included several HAP metals: Arsenic, cadmium, chromium, lead, manganese, mercury, and nickel. An area source NESHAP for various operations in this source category is currently under development, but most of the sources in the category are defined by SIC 2819, which covers more traditional chemical industry production operations. Calcium carbide production uses virtually the same equipment and processes as ferroalloys, and was included in the NSPS. Because of the similarities between calcium carbide production and ferroalloys production, we are proposing to address calcium carbide production in this proposed rule, as opposed to the inorganic chemicals area source NESHAP.

IV. Summary of Proposed Requirements

A. Do these proposed standards apply to my source?

The proposed subpart YYYYYY standards would apply to each existing or new electrometallurgical operation located at an area source that produces silicon metal, ferrosilicon, ferrotitanium using the aluminum reduction process, ferrovanadium, ferromolybdenum, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon, calcium carbide or other ferroalloy products. These proposed standards do not apply to research and development facilities, as defined in section 112(c)(7) of the CAA.

B. When must I comply with these proposed standards?

All existing area source facilities subject to this proposed rule would be required to comply with the rule requirements no later than 180 days after the date of publication of the final rule in the **Federal Register**. We believe that 180 days would provide sufficient time for existing sources to comply with the requirements of the final rule. To our knowledge, there is no existing facility that would be required to install or modify emission control equipment to meet the requirements of the final rule. New sources would be required to comply with these rule requirements upon the date of publication of the final rule in the **Federal Register** or upon startup of the facility, whichever is later.

C. What are the proposed standards?

1. Electrometallurgical Operation Visible Emissions Limit

These proposed standards establish a limit, as measured by Method 22, on the duration of visible emissions (VE) from the control device(s) on the electrometallurgical operations. The Method 22 test is designed to measure the amount of time that any VE are observed during an observation period. The owner or operator must demonstrate that the control device outlet emissions do not exceed 3 percent of accumulated occurrences in a 60-minute observation period. We refer to this as the 3 percent limit throughout this document.

2. Furnace Building Opacity Limit

These proposed standards establish a limit for fugitive emissions, as determined by Method 9, from the furnace building due solely to electrometallurgical operations. The owner or operator must demonstrate that the furnace building emissions do not exhibit opacity greater than 20 percent (6-minute average), except for one 6-minute average per hour that does not exceed 40 percent during the 1-hour observation period. The observation period must include product tapping.

D. What are the initial and subsequent testing requirements?

1. Electrometallurgical Operations VE Limit

For each control device on an electrometallurgical operation, the owner or operator would be required to conduct an initial Method 22 (Appendix A–7 of 40 CFR part 60) VE test for at least 60 minutes. A semiannual Method 22 test is required thereafter. In the case of a fabric filter control device, emissions would be observed at the monovent or outlet stack(s), as applicable. For ferroalloy facilities using wet scrubbers for PM control, the observations would be conducted at the scrubber outlet stack. For example, scrubber outlet emissions may be directed to a flare or to another combustion source such as a dryer. In this case the outlet of the downstream device or process would be observed.

2. Furnace Building Opacity

In order to demonstrate compliance with the furnace building opacity requirements, the owner or operator would be required to conduct an initial 60-minute (ten 6-minute averages) opacity test for fugitive emissions from the furnace building according to the procedures in § 63.6(h) (subpart A of the 40 CFR part 63 General Provisions) and Method 9 of Appendix A–4 of 40 CFR part 60. The owner or operator would then conduct a follow up Method 9 test every 6 months.

In order to provide flexibility to sources and reduce the costs of demonstrating compliance, we are proposing to allow sources to monitor visible emissions using a Method 22 test in place of the semiannual Method 9 test. The Method 22 test is successful if no visible emissions are observed for 90 percent of the readings over the furnace cycle (tap to tap) or 60 minutes, whichever is more. If VE are observed greater than 10 percent of the time over the furnace cycle or 60 minutes, whichever is more, then the facility must conduct a Method 9 performance test as soon as possible, but no later than 15 calendar days after the Method 22 test.

E. What are the monitoring requirements?

For existing ferroalloy facilities, the owner or operator would be required to conduct and record daily visual inspection of the control device outlet. In the case of a fabric filter, the source would observe the monovent or fabric filter outlet stack(s) for any VE. In the case of a wet scrubber, the source would observe the scrubber outlet stack. Should any of the daily observations reveal any visible emissions, the owner or operator must conduct a Method 22 test as described earlier within 24 hours.

The owner or operator of a new electrometallurgical operation equipped with a new fabric filter would be required to install and operate a bag leak detection system and prepare a site-specific monitoring plan instead of

[1] Memorandum from Barbara Driscoll, EPA, to Urban Strategy Docket. Expanded Description of Source Categories Listed in June 2002 for Future Regulatory Development. November 18, 2002.

complying with the daily visual inspection requirements for existing sources. In addition, existing sources would have the option of complying with the bag leak detection system requirements as an alternative to the daily visual inspections.

In case of bag leak detection system alarm, the source would be required to conduct a visual inspection within 1 hour. If the visual monitoring reveals the presence of any VE, the source would be required to conduct a Method 22 test within 24 hours of determining the presence of any VE.

The owner or operator of a new sealed EAF equipped with a wet scrubber[2] would be required to install, operate and maintain a continuous parameter monitoring system (CPMS) to measure and record the 3-hour average pressure drop and scrubber water flow rate instead of complying with the daily visual inspection requirements. Existing sources would have the option of conducting CPMS monitoring in place of the daily visual inspection requirements, as well.

When operating a CPMS, if the 3-hour average pressure drop or scrubber water flow rate is below the minimum levels that indicate normal operation of the control device, the source would be required to conduct visual monitoring of the outlet stack(s) within 1 hour. Manufacturer's specifications will be used to provide the values for normal operation. If the visual monitoring reveals the presence of any VE, the source would be required to conduct a Method 22 test within 24 hours of determining the presence of any VE.

F. What are the notification, recordkeeping, and reporting requirements?

The affected new and existing sources would be required to comply with certain requirements of the General Provisions (40 CFR part 63, subpart A), which are identified in Table 1 of this proposed rule. The General Provisions include specific requirements for notifications, recordkeeping, and reporting, including provisions for a startup, shutdown, and malfunction plan and reports required by 40 CFR 63.6(e). Each facility would be required to submit an Initial Notification and a Notification of Compliance Status according to the requirements in 40 CFR 63.9 in the General Provisions. The owner or operator would be required to submit the Initial Notification within 120 days after publication of the final rule in the **Federal Register**. The owner or operator would be required to submit a Notification of Compliance Status within 90 days after the applicable compliance date to demonstrate initial compliance with these proposed standards.

In addition to the records required by 40 CFR 63.10, owners and operators would also be required to maintain records of all monitoring data including:

- Date, place, and time of the monitoring event
- Person conducting the monitoring
- Technique or method used
- Operating conditions during the activity
- Results, including the date, time, and duration of the period from the time the monitoring indicated a problem to the time that monitoring indicated proper operation.

V. Rationale for This Proposed Rule

A. How did we select the source category?

As described in section II.B, we listed the ferroalloys production source category under CAA section 112(c)(3) on November 22, 2002 (67 FR 70427). The inclusion of this source category on the area source category list was based on data from the CAA section 112(k) inventory, which represents 1990 urban air information. Ferroalloys production was listed for its contributions toward meeting the 90 percent requirement of chromium compounds, manganese compounds, and nickel compounds.

For this source category, we solicited information on the production operations, emission sources, and available controls for both area and major sources using written facility surveys, reviews of published literature, information gathered during the major source NESHAP, and reviews of operating permits. We also held discussions with industry representatives, State permitting organizations, and EPA experts. This research confirmed that the ferroalloys production source category emits the above-noted urban HAP, although we found that current emissions of such HAP are lower than the amounts estimated in the section 112(k) inventory.

B. How did we select the affected source?

Affected source means the collection of equipment and processes in the source category or subcategory to which the subpart applies. In selecting the affected source for regulation, we identified the ferroalloys production metal HAP emitting operations and the quantity of metal HAP emissions from the individual or groups of emissions points. We concluded that designating the electrometallurgical operation (including EAF or other reactions vessels such as crucibles) as the affected source was the most appropriate approach and consistent with existing ferroalloys regulations (i.e., the major source NESHAP and the NSPS). This proposed rule includes requirements for the control of primary, tapping, and fugitive emissions from electrometallurgical operations.

C. How did we address the ferroalloys production metal HAP in this proposed rule?

For this proposed rule, we have selected PM as a surrogate for ferroalloys production metal HAP. We decided that it was not practical to establish individual standards for each specific type of metallic HAP that could be present in the emissions (e.g., separate standards for manganese emissions, chromium emissions, and nickel emissions) because the types and quantities of metal HAP can vary widely in the raw materials. Further, and more significantly, when released, each of the metallic HAP compounds behaves as PM. The control technologies used for the control of PM emissions achieve comparable levels of performance for these metallic HAP emissions, i.e., when PM is captured, HAP metals are captured nonpreferentially as part of the PM. Therefore, emission standards requiring control of PM will also achieve comparable control of metallic HAP emissions.

D. How was GACT determined?

As provided in CAA section 112(d)(5), we are proposing standards representing GACT for the ferroalloys production source HAP emissions. As noted in section II.A of this preamble, the statute allows the Agency to establish standards for area sources listed pursuant to section 112(c) based on GACT. The statute does not set any condition precedent for issuing standards under section 112(d)(5) other than that the area source category or subcategory at issue must be one that EPA listed pursuant to section 112(c), which is the case here.

Moreover, all of the facilities in this source category have good operational controls in place. We evaluated the control technologies that are generally available for the ferroalloys production area source category. We also considered costs and economic impacts in determining GACT. We believe the consideration of costs and economic impacts is especially important for the

[2] The exhaust gases from the sealed EAF can be captured using lower airflows than from an open EAF, but the temperature is higher, precluding the use of fabric filters. Such sources use wet scrubbers as the primary emissions control.

well-controlled ferroalloys production area sources because, given current well-controlled levels, requiring additional controls would result in only marginal reductions in emissions at very high costs for modest incremental improvement in control for this area source category. We explain below in detail our proposed GACT determinations.

1. Electrometallurgical Operation Visible Emission Limit

All of the known area source electrometallurgical operations are equipped with either fabric filters or wet scrubbers to control PM emissions. Major source ferroalloy producers also utilize similar PM controls on EAF. Most of these control devices and their associated furnaces or other reaction vessels have been in operation for many years and are custom-designed and -built. In addition, the majority of EAF in this industry are controlled with large, positive pressure fabric filters because of the large volume of air that is used to capture the primary (and typically tapping emissions) from the open furnaces that are the predominate EAF-type in the U.S. In other cases, negative pressure fabric filters are used to control PM emissions from the smaller specialty ferroalloy operations and/or tapping emissions, because lower airflow rates are needed to capture these emissions. One existing facility that has a sealed EAF uses a scrubber as the primary means of emission control. We reviewed the existing permit limits to evaluate whether the control devices exhibit a similar level of control and determined that they do. (See technical memorandum in the docket for more details on EAF permit requirements and estimated PM emissions).

Based on the existing operating permit requirements for EAF at ferroalloys production facilities, we found a variety of formats and units, e.g., percent opacity, allowable PM or PM_{10} emission rates (pounds per hour, tpy, or pound per megawatt-hour), and outlet concentrations (grains per dry standard cubic foot (gr/dscf)). However, as discussed below, there are technical, cost, and implementation issues associated with demonstrating compliance with a PM numerical emission limit such that it does not constitute GACT for this source category.

A traditional approach to demonstrating compliance with a numerical emissions limit is to conduct a PM emissions performance test and then monitor parameters of the control device that indicate whether the control device is operating at least as well as it was during the test. This approach is particularly effective if there are conditions that can produce variable outlet emissions levels. However, fabric filters that are commonly used at ferroalloy production operations are essentially constant concentration devices. This means that fabric filters are very effective (i.e., 99 percent or more), at removing PM of all particle sizes when properly designed and operated. The variability of the uncontrolled pollutant loading has very little effect on the concentration of PM in the exhaust of the device (see document at *http://www.epa.gov/ttnchie1/mkb/documents/ff-pulse.pdf)*. Based on an evaluation of existing permit limits in this industry, we believe that a fabric filter control device would need to achieve an outlet concentration of less than 0.01 gr/dscf to ensure that the control device is well operated and maintained.

We have concerns about the economic effect of PM emissions testing for smaller facilities. The typical EPA Method 5 PM emissions test on a stack costs between $3,000 and $10,000. A positive pressure fabric filter device typical of those used at the bulk ferroalloys producers does not have a stack of the type for which Method 5 is designed. Instead, these control devices emit essentially straight from the bags to the atmosphere through multiple stub stacks or a long roof vent. Conducting representative emissions testing on such devices requires a modified approach, which we have described in EPA Method 5D. The cost of conducting a test with Method 5D is driven by the design and size of the fabric filter outlet. Method 5D tests on fabric filters will cost from 3 to 10 times more than a Method 5 test on a stack. The $10,000 to over $40,000 cost per test per control device become a significant economic burden for these area sources.

Given these control device characteristics, we considered whether an opacity or VE standard would be GACT for this industry. There is a correlation between PM concentration and opacity in the fabric filter outlet stream, and studies have shown that particulate concentrations are approximately zero at an opacity of zero.[3] For example, a test at a wet cement kiln with a fabric filter showed that when outlet concentrations were less than 0.009 gr/dscf, opacity was less than 2 percent. This opacity is low enough that it would probably be observed as zero under most conditions. This in turn would result in a very low incidence of VE during any observation period. A search of permits found several examples of venturi scrubbers also being subject to zero VE tests.

Therefore, we propose a very low (e.g., 3 percent accumulation of VE during the observation period) VE limit as GACT. As described above, data support a conclusion that a 3 percent accumulation or less VE limit will provide assurance that the control device is properly designed and operated. Further, the cost of VE testing (less than $125 for Method 22) is significantly less than the cost of PM emissions testing. It is also less than the cost of conducting a Method 9 test (approximately $2,000 for a contractor to conduct the test), which is why we did not select an opacity limit as GACT. A rule that specifies a very low VE limit can afford to include more frequent testing than one that has a PM emissions limit that may require only an initial test or at best a test only every several years.

2. Furnace Building Opacity

In addition to control requirements, maintaining capture efficiency is also important in determining GACT. All of the ferroalloys production electrometallurgical operations are equipped with capture systems. We lack empirical data on their actual performance; however, there is precedent for establishing a VE limit from the EAF (NSPS) or furnace building (major source NESHAP, 20 percent opacity) as a surrogate for performance of the capture systems. Establishing a 20 percent opacity limit is common in State regulations (including Indiana, Kentucky, Michigan, Ohio, and West Virginia) that address foundries, smelters, EAF, and other combustion sources. For example, Michigan rule 336.1358 for roof monitor VE at steel manufacturing facilities from electric arc furnaces and blast furnaces states:

> Rule 358. (1) A person shall not cause or permit to be discharged to the outer air, at a steel manufacturing facility, from a roof monitor source of emission of an electric arc furnace, or a blast furnace, a visible emission with a density of more than 20% opacity.

Therefore, we have determined that a 20 percent furnace building (e.g., shop) limit is GACT for this source category.

Existing permits and regulations also tend to provide an upper bound opacity limit to account for variation in building operations that could result in fugitive emissions during the Method 9 observation period. These upper limits range from 27 percent (Michigan

[3] Study of Benefits of Opacity Monitors Applied to Portland Cement Kilns. Prepared by Ronald Meyers, U.S. EPA, May 15, 1991, pp. 3–1, 3–6.

permits for similar sources (foundries)) to 60 percent (major source ferroalloys NESHAP, see 40 CFR 63.1653(a)). The existing title V permit for a ferrosilicon producer allows a single 6-minute average not to exceed 40 percent during the Method 9 observation period. For this proposed area source rule, we propose to establish an upper limit opacity of 40 percent, limited to a single 6-minute average opacity determination.

In addition to establishing an upper limit, we considered whether upset or malfunction conditions such as blowing taps, poling, and oxygen lancing of the tap hole should be excluded from the observation period. For example, blowing taps are a malfunction and occur when the pressure in the furnace is not balanced. Similarly, both oxygen lancing and poling are considered to be ''failures of the process to operate in a normal or usual manner'', as described in the March 1976 EPA document ''Supplemental Information on Standards of Performance or Ferroalloy Production Facilities''. We determined that the General Provisions requirements (40 CFR 63.6(e)) to develop and operate according to a startup, shutdown, and malfunction plan would adequately address these and other types of malfunctions that might occur during the VE observation period. Therefore, we do not believe it is necessary to provide such exclusions in this proposed rule.

E. How did we select the compliance requirements?

We are proposing testing, monitoring, notification, and recordkeeping requirements to ensure compliance with this proposed rule. These provisions are based, in part, on requirements that have been applied to several industries in other rulemakings and an understanding of how control devices perform and can be effectively monitored. In selecting these requirements, we identified the information necessary to ensure emissions controls are maintained and operated properly on a continuing basis. We also evaluated more enhanced monitoring requirements, such as the use of bag leak detection systems, which were required in 40 CFR part 63, subpart XXX for new sources. We believe the proposed requirements will assure compliance without posing a significant additional burden for facilities that must implement them.

1. Electrometallurgical Operation Equipment Standards

We are proposing that compliance with the VE limit would be established through an initial and then semiannual observation of VE using EPA Method 22. Method 22 results record the accumulation of time that any VE is observed. We are proposing a 60-minute observation period to ensure that observations occur during representative conditions. We are seeking comment on whether a different observation period might be appropriate.

Monitoring would consist of a daily VE observation. As described above, properly operated and maintained fabric filters and scrubbers should normally operate with no VE at the outlet. If any VE are observed, a possible problem is indicated and a Method 22 test must be conducted within 24 hours. If the Method 22 test shows that the control device emissions are above the 3 percent limit, the source would be required to report an exceedance. This compliance format will encourage sources to correct control device operational problems as soon as possible.

For new sources equipped with fabric filters, we are proposing use of bag leak detection systems for monitoring. Bag leak detection systems are typical requirements for new sources (e.g., new sources subject to the major source NESHAP are required to install them) and represent state-of-the art continuous compliance by providing early notice of leaking bags. These systems can be incorporated into the design and operation for new sources and would not require retrofitting or duplicative monitoring as would be the case if they were applied to existing sources. Existing sources also might opt to install bag leak detection systems to monitor performance. Sources using bag leak detection systems would not be subject to the daily VE requirements. Instead, a system alarm would trigger a VE observation within 1 hour. If any VE are observed, the source would be required to conduct a Method 22 test within 24 hours. Sources desiring to install a PM emissions monitoring system (e.g., PM continuous emissions monitoring system) or other monitoring method can request the Administrator's approval of such a plan on a case-by-case basis under the authority of the part 63 General Provisions (§ 63.8(f)(4)(i)).

We are proposing that new sealed EAF sources with wet scrubbers install, maintain and operate a CPMS to monitor pressure drop and scrubber liquid flow rate. These systems represent state-of-the-art continuous compliance and can be designed into the unit at installation. Existing sources would be allowed to adopt CPMS as well. Similar to bag leak detection system monitoring, the CPMS would be used to provide an indication that the wet scrubber is operating properly instead of a required daily check of VE. We are proposing that if the 3-hour average pressure drop or scrubber water flow rate is below the minimum levels that indicate normal operation of the control device, the source would be required to conduct visual monitoring of the outlet stack(s) within 1 hour. Manufacturer's specifications will be used to provide the values for normal operation. If the visual monitoring reveals the presence of any VE, the source must conduct a Method 22 test within 24 hours.

2. Furnace Building Opacity

Compliance with an opacity limit for fugitive emissions is commonly demonstrated using a Method 9 test. Therefore, we are proposing that initial compliance must be demonstrated using a certified Method 9 observer to perform this test. We recognize that not all facilities have a certified observer on staff, and we are proposing that sources would have the option of monitoring VE using Method 22 for the subsequent semi-annual compliance demonstration. The test is successful if no VE are observed for 90 percent of the readings over the furnace cycle (tap to tap) or 60 minutes, whichever is more. If VE are observed greater than 10 percent of the time over the furnace cycle or 60 minutes, whichever is more, then the facility must conduct a Method 9 test as soon as possible, but no later than 15 calendar days after the Method 22 test.

We are proposing this compliance alternative because we are trying to reduce the potential compliance burden on sources. To the extent that sources have certified Method 9 observers already on staff for other reasons, they might choose to continue to demonstrate semiannual compliance with Method 9 observation. Other sources might choose to hire a contractor to conduct both the initial Method 9 and the subsequent observations rather than devote in-house resources. However, we have assumed that some sources would choose to hire a contractor to do the initial compliance observation, but might want to conduct the semiannual observations using in-house staff if they could avoid the cost of keeping a certified Method 9 reader on staff. The Method 22 alternative allows the use of this potentially more economical test, but a Method 9 test would be required in the event that the VE observed using Method 22 exceed 10 percent of the time in the observation period.

F. How did we decide to exempt this area source category from title V permitting requirements?

We are proposing exemption from title V permitting requirements for affected facilities in the ferroalloys production area source category for the reasons described below.

Section 502(a) of the CAA provides that the Administrator may exempt an area source category from title V if he determines that compliance with title V requirements is ''impracticable, infeasible, or unnecessarily burdensome'' on an area source category. See CAA section 502(a). In December 2005, in a national rulemaking, EPA interpreted the term ''unnecessarily burdensome'' in CAA section 502 and developed a four-factor balancing test for determining whether title V is unnecessarily burdensome for a particular area source category, such that an exemption from title V is appropriate. See 70 FR 75320, December 19, 2005 (''Exemption Rule'').

The four factors that EPA identified in the Exemption Rule for determining whether title V is ''unnecessarily burdensome'' on a particular area source category include: (1) Whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting that are proposed for an area source category (70 FR 75323); (2) whether title V permitting would impose significant burdens on the area source category and whether the burdens would be aggravated by any difficulty the sources may have in obtaining assistance from permitting agencies (70 FR 75324); (3) whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources (70 FR 75325); and (4) whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the proposed NESHAP for the area source category, without relying on title V permits (70 FR 75326).

In discussing these factors in the Exemption Rule, we further explained that we considered on ''a case-by-case basis the extent to which one or more of the four factors supported title V exemptions for a given source category, and then we assessed whether considered together those factors demonstrated that compliance with title V requirements would be 'unnecessarily burdensome' on the category, consistent with section 502(a) of the Act.'' See 70 FR 75323. Thus, in the Exemption Rule, we explained that not all of the four factors must weigh in favor of exemption for EPA to determine that title V is unnecessarily burdensome for a particular area source category. Instead, the factors are to be considered in combination, and EPA determines whether the factors, taken together, support an exemption from title V for a particular source category.

In the Exemption Rule, in addition to determining whether compliance with title V requirements would be unnecessarily burdensome on an area source category, we considered, consistent with the guidance provided by the legislative history of section 502(a), whether exempting the area source category would adversely affect public health, welfare or the environment. See 70 FR 15254–15255, March 25, 2005. We have determined that the proposed exemption from title V would not adversely affect public health, welfare and the environment. Our rationale for this decision follows here.

In considering the proposed exemption from title V requirements for sources in the category affected by this proposed rule, we first compared the title V monitoring, recordkeeping, and reporting requirements (factor one) to the requirements in this proposed NESHAP for the ferroalloys production area source category. Title V requires periodic monitoring to ensure compliance. This proposed standard would provide for monitoring in the form of VE observations and opacity testing that would assure compliance with the requirements of this proposed rule. This proposed NESHAP would also require the preparation of an annual compliance certification report and submission of this report if there are any deviations during the year, which will identify for the agency implementing this rule those facilities with compliance issues, in the same way as a title V permit. Records would be required to ensure that the compliance requirements are followed and any needed corrective actions are taken, including such records as results of the visual emissions and opacity tests and the resulting corrective actions such as replacing a torn fabric filter bag. Therefore, this proposed rule contains monitoring sufficient to assure compliance with the requirements of this proposed rule.

We also considered the extent to which title V could potentially enhance compliance for area sources covered by this proposed rule through recordkeeping or reporting requirements. We have considered the various title V recordkeeping and reporting requirements, including requirements for a 6-month monitoring report, deviation reports, and an annual certification in 40 CFR 70.6 and 71.6. For any affected ferroalloys production facility, this proposed NESHAP would require an initial notification and an initial and annual notification of compliance status. This proposed NESHAP would further require affected facilities to maintain records showing compliance with the required standards and compliance requirements. This proposed NESHAP also would require sources to comply with the requirements in the part 63 General Provision for startup, shutdown, and malfunction plans, reports, and records in 40 CFR 63.6(e)(3); see Table 1 of this proposed rule. When a startup, shutdown, and malfunction report must be submitted, it must consist of a letter containing the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy. The information that would be required in the notifications, reports, and records is similar to the information that would be provided in the deviation reports required under 40 CFR 70.6(a)(3) and 40 CFR 71.6(a)(3).

We believe the monitoring, recordkeeping, and reporting requirements in this proposed rule are sufficient to assure compliance with the requirements of this proposed rule. Therefore, we conclude that title V would not result in significant improvements to the compliance requirements we are proposing for this area source category.

For the second factor, we must determine whether title V permitting would impose a significant burden on the area sources in the category and whether that burden would be aggravated by any difficulty the source may have in obtaining assistance from the permitting agency. Subjecting any source to title V permitting imposes certain burdens and costs that do not exist outside of the title V program. EPA has estimated that the average annual cost of obtaining and complying with a title V permit is $9,500 per source.[4] See Information Collection Request (ICR) for Part 70 Operating Permit Regulations, April 2007, EPA ICR Number 1587.07. EPA does not have specific estimates for the burdens and costs of permitting the

[4] This value is higher than the permitting cost estimate discussed in other recent area source proposal packages because it is based on an updated analysis of the reporting burden. However, this value is based on an understanding that most of the title V permits that are currently in development are renewals. A new title V permit would likely have a higher average cost of development.

ferroalloys production area sources; however, there are certain activities associated with the part 70 and 71 rules. These activities are mandatory and impose burdens on the facility. They include reading and understanding permit program guidance and regulations; obtaining and understanding permit application forms; answering follow-up questions from permitting authorities after the application is submitted; reviewing and understanding the permit; collecting records; preparing and submitting monitoring reports on a 6-month or more frequent basis; preparing and submitting prompt deviation reports, as defined by the State, which may include a combination of written, verbal, and other communications methods; collecting information, preparing, and submitting the annual compliance certification; preparing applications for permit revisions every 5 years; and, as needed, preparing and submitting applications for permit revisions. In addition, although not required by the permit rules, many sources obtain the contractual services of consultants to help them understand and meet the permitting program's requirements. The ICR for part 70 provides additional information on the overall burdens and costs, as well as the relative burdens of each activity. Also, for a more comprehensive list of requirements imposed on part 70 sources (hence, burden on sources), see the requirements of 40 CFR 70.3, 70.5, 70.6, and 70.7.

In assessing the second factor for the three existing ferroalloys production facilities that do not currently have title V permits (two of whom are small businesses), we examined the potential cost implications for the source category. At a cost of $9,500 per facility to obtain and maintain a title V permit, the cost of permits would exceed the estimated total annualized cost of complying with the standards (approximately $6,100 per facility). Thus, we believe that the second factor supports the proposed title V exemption for ferroalloys production facilities.

The third factor, which is closely related to the second factor, is whether the costs of title V permitting for these area sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources. We explained for the second factor that the costs of compliance with title V would impose a significant burden on the sources that would be required to obtain a title V permit. We also believe in considering the first factor that, while title V might impose additional requirements, the monitoring, recordkeeping and reporting requirements in the proposed NESHAP would assure compliance with the standards imposed in the NESHAP. In addition, in our consideration of the fourth factor discussed below, we find that there are adequate implementation and enforcement programs in place to assure compliance with the NESHAP. Because the costs of compliance with title V are so high, and the potential for gains in compliance is low, we propose that title V permitting is not justified for this source category. Accordingly, the third factor supports the proposed title V exemption for ferroalloys production area sources.

The fourth factor we considered in determining if title V is unnecessarily burdensome is whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP without relying on title V permits. Seven of the 10 existing facilities already have title V permits because of their criteria pollutant emissions (primarily sulfur dioxide). These sources would continue to maintain their title V permits, which would be modified to include the NESHAP requirements, once it is promulgated. For those three sources that currently lack title V permits, all have State construction and/or operating permits that already require controls and compliance assurance similar to this NESHAP. We also note that EPA retains authority to enforce this NESHAP anytime under CAA sections 112, 113 and 114. We further note that small business assistance programs required by CAA section 507 may be used to assist area sources that have been exempted from title V permitting. Also, States and EPA often conduct voluntary compliance assistance, outreach, and education programs (compliance assistance programs), which are not required by statute. These additional programs would supplement and enhance the success of compliance with this area source NESHAP. We believe that the statutory requirements for implementation and enforcement of this NESHAP by the delegated States and EPA, combined with the additional assistance programs, would be sufficient to assure compliance with this area source NESHAP without relying on title V permitting.

In applying the fourth factor in the Exemption Rule, where EPA had deferred action on the title V exemption for several years, we had enforcement data available to demonstrate that States were not only enforcing the provisions of the area source NESHAP that we exempted, but that the States were also providing compliance assistance to assure that the area sources were in the best position to comply with the NESHAP. See 70 FR 75325–75326. In proposing this rule, we do not have similar data available on the specific enforcement as in the Exemption Rule, but we have no reason to think that States will be less diligent in enforcing this NESHAP. See 70 FR 75326. In fact, States must have adequate programs to enforce the section 112 regulations and provide assurances that they will enforce all NESHAP before EPA will delegate the program. See 40 CFR part 63, General Provisions, subpart E.

In light of all the information presented here, we believe that there are implementation and enforcement programs in place that are sufficient to assure compliance with the Ferroalloys Production NESHAP without relying on title V permitting. Balancing the four factors for this area source category strongly supports the proposed finding that title V is unnecessarily burdensome. While title V might add additional compliance requirements if imposed, we believe that there would not be significant improvements to the compliance requirements in the NESHAP because the requirements in this proposed rule are specifically designed to assure compliance with the emission standards established in the rule.

We further maintain that the potential economic costs of compliance with title V would impose a significant burden on the sources that would be newly required to obtain title V permits. In addition, these high relative costs would not be justified given that there is likely to be little or no potential gain in compliance if title V were required. And, finally, there are adequate implementation and enforcement programs in place to assure compliance with the NESHAP. Thus, we propose that title V permitting is ''unnecessarily burdensome'' for the ferroalloys production area source category.

In addition to evaluating whether compliance with title V requirements is ''unnecessarily burdensome,'' EPA also considered, consistent with guidance provided by the legislative history of section 502(a), whether exempting the ferroalloy production area source category from title V requirements would adversely affect public health, welfare, or the environment. Exemption of the ferroalloys production area source category from title V requirements would not adversely affect public health, welfare, or the environment because the level of control would remain the same if a permit were required. The title V permit program

does not impose new substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with respect to determining compliance with applicable requirements. As stated in our consideration of factor one for this category, title V would not lead to significant improvements in the compliance requirements applicable to existing or new area sources.

Furthermore, one of the primary purposes of the title V permitting program is to clarify, in a single document, the various and sometimes complex regulations that apply to sources in order to improve understanding of these requirements and to help sources achieve compliance with the requirements. In this case, however, we do not believe that a title V permit is necessary to understand the requirements applicable to these area sources. We also have no reason to think that new sources would be substantially different from the existing sources. Finally, 7 of the 10 existing sources already have title V permits and any incremental environmental benefit would only result from imposing title V requirements on the remaining sources, which are already covered by State construction and/or operating permits. Based on this analysis, we believe that title V exemptions for ferroalloys production area sources would not adversely affect public health, welfare, or the environment for all of the reasons previously explained.

For the reasons stated here, we are proposing to exempt the ferroalloys production area source categories from title V permitting requirements.

VI. Summary of Impacts of These Proposed Standards

Affected sources are well-controlled and our proposed GACT determination reflects such controls. Compared to the early 1990s when we evaluated this industry as part of the development of the major source rule, we believe that sources have improved their level of control and reduced emissions due to State permitting requirements or actions taken to improve efficiency and/or reduce costs. For example, sources have reported improved capture of tapping emissions, improved process controls that minimize upset conditions, and improvements in fabric filter technology such as installation of Goretex® bags. We estimate that the only impact associated with this proposed rule is the compliance requirements (monitoring, reporting, recordkeeping and testing) which is estimated to be approximately $6,100 per facility.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The ICR document prepared by EPA has been assigned EPA ICR number 2303.01.

The recordkeeping and reporting requirements in this proposed rule are based on the requirements in EPA's NESHAP General Provisions (40 CFR part 63, subpart A). The recordkeeping and reporting requirements in the General Provisions are mandatory pursuant to section 114 of the CAA (42 U.S.C 7414). All information other than emissions data submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B.

This proposed NESHAP would require ferroalloys production area sources to submit an Initial Notification and a Notification of Compliance Status according to the requirements in 40 CFR 63.9 of the General Provisions (subpart A). Records would be required to demonstrate compliance with the opacity and VE requirements. The owner or operator of a ferroalloys production facility also is subject to notification and recordkeeping requirements in 40 CFR 63.9 and 63.10 of the General Provisions (subpart A), although we are proposing that annual compliance reports are sufficient instead of semiannual reports.

The annual burden for this information collection averaged over the first three years of this ICR is estimated to be a total of 819 labor hours per year at a labor cost of $61,122 or approximately $6,100 per facility. The average annual reporting burden is 26 hours per response, with approximately 3 responses per facility for 10 respondents. There are no capital and operating and maintenance costs associated with the proposed rule requirements for existing sources. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this proposed rule, which includes this ICR, under Docket ID number [EPA–HQ–OAR–2008–0154]. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this proposed rule for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after September 15, 2008, a comment to OMB is best assured of having its full effect if OMB receives it by October 15, 2008. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201 (less than 750 employees for NAICS 331112 and 331419 and less than 1,000 employees for NAICS 325188); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on

a substantial number of small entities. This proposed rule is estimated to impact 10 area source ferroalloys production facilities that are currently operating. We estimate that five of these facilities may be small entities. We have determined that small entity compliance costs, as assessed by the facilities' cost-to-sales ratio, are expected to be less than 0.02 percent. The costs are so small that the impact is not expected to be significant. Although this proposed rule contains requirements for new area sources, we are not aware of any new area sources being constructed now or planned in the next 3 years, and consequently, we did not estimate any impacts for new sources.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this proposed rule on small entities. The standards represent practices and controls that are common throughout the ferroalloys production industry. The standards also require only the essential recordkeeping and reporting needed to demonstrate and verify compliance. These standards were developed based on information obtained from small businesses in our surveys, consultation with small business representatives on the State and national level, and industry representatives that are affiliated with small businesses.

We continue to be interested in the potential impacts of this proposed action on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The average cost per facility to comply with this proposed rule's monitoring and compliance requirements is approximately $6,100 for the 10 existing facilities. This proposed action is not subject to the requirements of sections 202 and 205 of the UMRA.

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule contains no requirements that apply to such governments, imposes no obligations upon them, and would not result in expenditures by them of $100 million or more in any one year or any disproportionate impacts on them.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule does not impose any requirements on State and local governments. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed rule imposes no requirements on tribal governments. Thus, Executive Order 13175 does not apply to this action. EPA specifically solicits additional comment on this proposed action from tribal officials.

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

EPA interprets Executive Order 13045 (62 F.R. 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it is based solely on technology performance.

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

This proposed action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This proposed rulemaking involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable VCS. However, we identified no such standards, and none were brought to our attention in comments. Therefore, EPA has decided to use EPA Methods 9 and 22 in this proposed rule.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable VCS and to explain why such standards should be used in this regulation.

Under § 63.7(f) and § 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority

populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This proposed rule will establish national standards for the ferroalloys production area source category.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 9, 2008.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

2. Part 63 is amended by adding subpart YYYYYY to read as follows:

Subpart YYYYYY—Revision of Source Category List for Standards Under Section 112(k) of the Clean Air Act; and National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities

Applicability and Compliance Dates

Sec.

63.11524 Am I subject to this subpart?

63.11525 What are my compliance dates?

Standards, Monitoring, and Compliance Requirements

63.11526 What are the standards for new and existing ferroalloys production facilities?

63.11527 What are the monitoring requirements for new and existing sources?

63.11528 What are the performance test and compliance requirements for new and existing sources?

63.11529 What are the notification, reporting, and recordkeeping requirements?

Other Requirements and Information

63.11530 What parts of the General Provisions apply to my facility?

63.11531 Who implements and enforces this subpart?

63.11532 What definitions apply to this subpart?

63.11533–63.11543 [Reserved]

Table 1 to Subpart YYYYYY of Part 63—Applicability of General Provisions

Subpart YYYYYY—Revision of Source Category List for Standards Under Section 112(k) of the Clean Air Act; and National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities

Applicability and Compliance Dates

§ 63.11524 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a ferroalloys production facility that is an area source of hazardous air pollutant (HAP) emissions. A ferroalloys production facility manufactures silicon metal, ferrosilicon, ferrotitanium using the aluminum reduction process, ferrovanadium, ferromolybdenum, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon, calcium carbide or other ferroalloy products using electrometallurgical operations including electric arc furnaces (EAFs) or other reaction vessels.

(b) The provisions of this subpart apply to each existing and new electrometallurgical operation affected source as defined in paragraphs (b)(1) and (b)(2) of this section.

(1) An electrometallurgical operation affected source is existing if you commenced construction or reconstruction of the EAF or other reaction vessel on or before September 15, 2008.

(2) An electrometallurgical operation affected source is new if you commenced construction or reconstruction of the EAF other reaction vessel after September 15, 2008.

(c) This subpart does not apply to research or laboratory facilities as defined in section 112(c)(7) of the Clean Air Act (CAA).

(d) You are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.

§ 63.11525 What are my compliance dates?

(a) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions of this subpart by no later than 180 days after the date of publication of the final rule in the **Federal Register**.

(b) If you start up a new affected source on or before the date of publication of the final rule in the **Federal Register**, you must achieve compliance with the applicable provisions of this subpart by no later than the date of publication of the final rule in the **Federal Register**.

(c) If you start up a new affected source after the date of publication of the final rule in the **Federal Register**, you must achieve compliance with the applicable provisions of this subpart upon startup of your affected source.

Standards, Monitoring, and Compliance Requirements

§ 63.11526 What are the standards for new and existing ferroalloys production facilities?

(a) You must not discharge to the atmosphere visible emissions (VE) from the control device that exceed 3 percent of accumulated occurrences in a 60-minute observation period.

(b) You must not discharge to the atmosphere fugitive PM emissions from the furnace building containing the electrometallurgical operations that exhibit opacity greater than 20 percent (6-minute average), except for one 6-minute average per hour that does not exceed 40 percent.

§ 63.11527 What are the monitoring requirements for new and existing sources?

(a) *EAF Equipped with Fabric Filters.*

(1) You must conduct daily visual monitoring of the monovent or fabric filter outlet stack(s) for any VE.

(2) If the daily visual monitoring reveals the presence of any VE, you must conduct a Method 22 (Appendix A–7 of 40 CFR part 60) test following the requirements of § 63.11528(b)(1) within 24 hours of determining the presence of any VE.

(3) If you own or operate an existing affected source, you may install, operate, and maintain a bag leak detection system for each fabric filter as an alternative to the monitoring requirements in paragraph (a)(1) of this section. If you own or operate a new affected source, you must install, operate, and maintain a bag leak detection system for each fabric filter according to the requirements in paragraphs (a)(3)(i) through (a)(3)(vii) of this section. Such source is not subject

to the requirements in paragraphs (a)(1) and (a)(2) of this section.

(i) The system must be certified by the manufacturer to be capable of detecting emissions of PM at concentrations of 10 milligrams per actual cubic meter (0.00044 grains per actual cubic foot) or less.

(ii) The bag leak detection system sensor must provide output of relative PM loadings and the owner or operator shall continuously record the output from the bag leak detection system using a strip chart recorder, data logger, or other means.

(iii) The system must be equipped with an alarm that will sound when an increase in relative PM loadings is detected over the alarm set point established in the operation and maintenance plan, and the alarm must be located such that it can be heard by the appropriate plant personnel.

(iv) The initial adjustment of the system must, at minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and establishing the alarm set points. If the system is equipped with an alarm delay time feature, you also must adjust the alarm delay time.

(v) Following the initial adjustment, do not adjust the sensitivity or range, averaging period, alarm set point, or alarm delay time, except that, once per quarter, you may adjust the sensitivity of the bag leak detection system to account for seasonal effects including temperature and humidity.

(vi) For fabric filters that are discharged to the atmosphere through a stack, the bag leak detector sensor must be installed downstream of the fabric filter and upstream of any wet scrubber.

(vii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(4) When operating a bag leak detection system, if an alarm sounds, conduct visual monitoring of the monovent or fabric filter outlet stack(s) as required in paragraph (a)(1) of this section within 1 hour. If the visual monitoring reveals the presence of any VE, you must conduct a Method 22 test following the requirements of § 63.11528(b)(1) within 24 hours of determining the presence of any VE.

(5) You must prepare a site-specific monitoring plan for each bag leak detection system. You must operate and maintain each bag leak detection system according to the plan at all times. Each plan must address all of the items identified in paragraphs (a)(5)(i) through (a)(5)(v) of this section.

(i) Installation of the bag leak detection system.

(ii) Initial and periodic adjustment of the bag leak detection system including how the alarm set-point will be established.

(iii) Operation of the bag leak detection system including quality assurance procedures.

(iv) Maintenance of the bag leak detection system including a routine maintenance schedule and spare parts inventory list.

(v) How the bag leak detection system output will be recorded and stored.

(b) *EAF Equipped with Wet Scrubbers*.

(1) You must conduct daily visual monitoring of the wet scrubber outlet stack(s) for any VE.

(2) If the daily visual monitoring reveals the presence of any VE, you must conduct a Method 22 (Appendix A–7 of 40 CFR part 60) test following the requirements of § 63.11528(b)(1) within 24 hours of determining the presence of any VE.

(3) If you own or operate an existing affected source, you may install, operate and maintain a continuous parameter monitoring system (CPMS) to measure and record the 3-hour average pressure drop and scrubber water flow rate as an alternative to the monitoring requirements specified in paragraph (b)(1) of this section. If you own or operate a new sealed EAF affected source, you must install, operate, and maintain a CPMS for each wet scrubber. Such source is not subject to the requirements in paragraph (b)(1) of this section.

(4) When operating a CPMS, if the 3-hour average pressure drop or scrubber water flow rate is below the minimum levels that indicate normal operation of the control device, conduct visual monitoring of the outlet stack(s) as required by paragraph (b)(1) of this section within 1 hour. Manufacturer's specifications for pressure drop and liquid flow rate will be used to determine normal operations. If the visual monitoring reveals the presence of any VE, you must conduct a Method 22 (Appendix A–7 of 40 CFR part 60) test following the requirements of § 63.11528(b)(1) within 24 hours of determining the presence of any VE.

§ 63.11528 What are the performance test and compliance requirements for new and existing sources?

(a) *Initial Compliance Demonstration Deadlines*. You must conduct an initial Method 22 (Appendix A–7 of 40 CFR part 60) test following the requirements of paragraph (b)(1) of this section of each existing electrometallurgical operation control device and an initial Method 9 observation following the requirements of paragraph(c)(1) of this section from the furnace building due to electrometallurgical operations no later than 60 days after your applicable compliance date. For any new electrometallurgical operation control device, you must conduct an initial Method 22 test following the requirements of paragraph (b)(1) of this section within 15 days of startup of the control device.

(b) *Visible Emissions Limit Compliance Demonstration*.

(1) You must conduct a Method 22 (Appendix A–7 of 40 CFR part 60) test to determine that VE from the control device do not exceed the emission standard specified in § 63.11526(a). For a fabric filter, conduct the test for at least 60 minutes at the fabric filter monovent or outlet stack(s), as applicable. For a wet scrubber, conduct the test for at least 60 minutes at the outlet stack(s).

(2) You must conduct a semiannual Method 22 test using the procedures specified in paragraph (b)(1) of this section.

(c) *Furnace Building Opacity*.

(1) You must conduct an opacity test for fugitive emissions from the furnace building according to the procedures in § 63.6(h) and Method 9 (Appendix A–4 of 40 CFR part 60). The test must be conducted for at least 60 minutes and shall include tapping the furnace or reaction vessel. The observation must be focused on the part of the building where electrometallurgical operation fugitive emissions are most likely to be observed.

(2) Conduct subsequent Method 9 tests no less frequently than every 6 months and each time you make a process change likely to increase fugitive emissions.

(3) As an alternative to the Method 9 performance test, you may monitor VE using Method 22 (Appendix A–7 of 40 CFR part 60) for subsequent semi-annual compliance demonstrations. The Method 22 test is successful if no VE are observed for 90 percent of the readings over the furnace cycle (tap to tap) or 60 minutes, whichever is more. If VE are observed greater than 10 percent of the time over the furnace cycle or 60 minutes, whichever is more, then the facility must conduct another test as soon as possible, but no later than 15 calendar days after the Method 22 test using Method 9 (Appendix A–4 of 40 CFR part 60) as specified in paragraph (c)(1) of this section.

§ 63.11529 What are the notification, reporting, and recordkeeping requirements?

(a) *Initial Notification.* You must submit the Initial Notification required by § 63.9(b)(2) of the General Provisions no later than 120 days after the date of publication of the final rule in the **Federal Register**. The Initial Notification must include the information specified in § 63.9(b)(2)(i) through (b)(2)(iv).

(b) *Notification of Compliance Status.* You must submit a Notification of Compliance Status in accordance with § 63.9(h) of the General Provisions before the close of business on the 30th day following the completion of the initial compliance demonstration. This notification must include the following:

(1) The results of Method 22 (Appendix A–7 of 40 CFR part 60) test for VE as required by § 63.11528(a);

(2) If you have installed a bag leak detection system, documentation that the system satisfies the design requirements specified in § 63.11527(a)(3) and that you have prepared a site-specific monitoring plan that meets the requirements specified in § 63.11527(a)(5);

(3) The results of the Method 9 (Appendix A–4 of 40 CFR part 60) test for building opacity as required by § 63.11528(a).

(c) *Annual Compliance Certification.* If you own or operate an affected source, you must submit an annual certification of compliance according to paragraphs (c)(1) through (c)(4) of this section.

(1) The results of any daily visual monitoring events required by § 63.11527 (a)(1) and (b)(1), alarm-based visual monitoring at sources equipped with bag leak detection systems as required by § 63.11527 (a)(4), or readings outside of the operating range at sources using CPMS on wet scrubbers required by § 63.11527 (b)(4).

(2) The results of the follow up Method 22 (Appendix A–7 of 40 CFR part 60) tests that are required if VE are observed during the daily visual monitoring, alarm-based visual monitoring, or out-of-range operating readings as described in paragraph (c)(1) of this section.

(3) The results of the Method 22 (Appendix A–7 of 40 CFR part 60) or Method 9 (Appendix A–4 of 40 CFR part 60) tests required by § 63.11528(b) and (c), respectively.

(4) If you operate a bag leak detection system for a fabric filter or a CPMS for a wet scrubber, submit annual reports according to the requirements in § 63.10(e) and include summary information on the number, duration, and cause (including unknown cause, if applicable) for monitor downtime incidents (other than downtime associated with zero and span or other calibration checks, if applicable).

(d) You must keep the records specified in paragraphs (d)(1) through (d)(2) of this section.

(1) As required in § 63.10(b)(2)(xiv), you must keep a copy of each notification that you submitted to comply with this subpart and all documentation supporting any Initial Notification, Notification of Compliance Status, and annual compliance certifications that you submitted.

(2) You must keep the records of all daily visual, Method 22 (Appendix A–7 of 40 CFR part 60), and Method 9 (Appendix A–4 of 40 CFR part 60) monitoring data required by § 63.11527 and the information identified in paragraphs (d)(2)(i) through (d)(2)(v).

(i) The date, place, and time of the monitoring event;

(ii) Person conducting the monitoring;

(iii) Technique or method used;

(iv) Operating conditions during the activity; and

(v) Results, including the date, time, and duration of the period from the time the monitoring indicated a problem (e.g., VE) to the time that monitoring indicated proper operation.

(e) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(f) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each recorded action.

(g) You must keep each record onsite for at least 2 years after the date of each recorded action according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.11530 What parts of the General Provisions apply to my facility?

Table 1 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.16 apply to you.

§ 63.11531 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by EPA or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are specified in paragraphs (c)(1) through (5) of this section.

(1) Approval of an alternative nonopacity emissions standard under § 63.6(g).

(2) Approval of an alternative opacity emissions standard under § 63.6(h)(9).

(3) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A ''major change to test method'' is defined in § 63.90.

(4) Approval of a major change to monitoring under § 63.8(f). A ''major change to monitoring'' under is defined in § 63.90.

(5) Approval of a major change to recordkeeping and reporting under § 63.10(f). A ''major change to recordkeeping/reporting'' is defined in § 63.90.

§ 63.11532 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in § 63.2, and in this section.

Bag leak detection system means a system that is capable of continuously monitoring relative PM (i.e., dust) loadings in the exhaust of a fabric filter to detect bag leaks and other upset conditions. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, electrodynamic, light scattering, light transmittance, or other effect to continuously monitor relative PM loadings.

Capture system means the collection of components used to capture gases and fumes released from one or more emissions points and then convey the captured gas stream to a control device or to the atmosphere. A capture system may include, but is not limited to, the following components as applicable to a given capture system design: duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.

Charging means introducing materials to an EAF or other reaction vessel, which may consist of, but are not limited to, ores, slag, carbonaceous material, and/or limestone.

Control device means the air pollution control equipment used to remove PM from the effluent gas stream generated by an EAF furnace or other reaction vessel.

Electric arc furnace means any furnace wherein electrical energy is converted to heat energy by transmission of current between electrodes partially submerged in the furnace charge.

Electrometallurgical operations means the use of electric and electrolytic processes to purify metals or reduce metallic compounds to metals.

Fugitive emissions means any pollutant released to the atmosphere that is not discharged through a ventilation system that is specifically designed to capture pollutants at the source, convey them through ductwork, and exhausts them from a control device. Fugitive emissions include pollutants released to the atmosphere through windows, doors, vents, or other building openings. Fugitive emissions also include pollutants released to the atmosphere through other general building ventilation or exhaust systems not specifically designed to capture pollutants at the source.

Sealed EAF means a furnace equipped with the cover with seals around the electrodes and outer edges of the cover to eliminate air being drawn in under the cover.

Tapping means the removal of product from the EAF or other reaction vessel under normal operating conditions, such as removal of metal under normal pressure and movement by gravity down the spout into the ladle.

§ 63.11533–63.11543 [Reserved]

Tables to Subpart YYYYYY of Part 63

As required in § 63.11530, you must meet each requirement in the following table that applies to you.

TABLE 1—TO SUBPART YYYYYY OF PART 63—APPLICABILITY OF GENERAL PROVISIONS

Citation	Subject
63.1 [1]	Applicability.
63.2	Definitions.
63.3	Units and abbreviations.
63.4	Prohibited activities.
63.5	Construction/reconstruction.
63.6	Compliance with standards and maintenance.
63.8	Monitoring.
63.9	Notification.
63.10	Recordkeeping and reporting.
63.12	State authority and delegations.
63.13	Addresses of State air pollution control agencies and EPA regional offices.
63.14	Incorporation by reference.
63.15	Availability of information and confidentiality.
63.16	Performance track provisions.

[1] § 63.11524(d), ''Am I subject to this subpart?'' exempts affected sources from the obligation to obtain title V operating permits.

[FR Doc. E8–21509 Filed 9–12–08; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2007–93; FRL–8716–1]

Withdrawal of Federal Antidegradation Policy for All Waters of the United States Within the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to withdraw the federal antidegradation policy for all waters of the United States within the Commonwealth of Pennsylvania. We will withdraw the federal antidegradation policy to allow Pennsylvania to implement its own antidegradation policy. Pennsylvania has adequately demonstrated that its antidegradation policy protects all waters of the United States within the Commonwealth at a level consistent with the federal requirements. Therefore, the federal antidegradation policy is redundant. In the ''Rules and Regulations'' section of this **Federal Register**, we are withdrawing the federal antidegradation policy for waters within the Commonwealth of Pennsylvania as a direct final rule without a prior proposed rule. If we received no adverse comment, we will not take further action on this proposed rule.

DATES: Written comments must be received by October 15, 2008.

ADDRESSES: Submit your comments, identified by Docket Id. No. EPA–HQ–OW–2007–0093, by mail to: Water Docket, USEPA, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Caroline Whitehead at EPA Headquarters, Office of Water, 1200 Pennsylvania Ave, NW, Mail Code 4305T, Washington, DC 20460 (*telephone:* 202–566–2907, fax: 202–566–0409 or *e-mail: whitehead.caroline@epa.gov*) or Denise Hakowski at EPA Region 3, 1650 Arch Street, Mail Code 3WP30, Philadelphia, PA 19103 (*telephone:* 215–814–5726, *fax:* 215–814–2318 or *e-mail: hakowski.denise@epa.gov*).

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final rule that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

I. Why Is EPA Issuing This Proposed Rule?

This document proposes to take action on withdrawing the federal antidegradation policy for the Commonwealth of Pennsylvania because Pennsylvania has adequately demonstrated that its antidegradation policy protects all waters of the United States at a level consistent with the federal requirements. We have published a direct final rule withdrawing the federal antidegradation policy for the Commonwealth of Pennsylvania in the ''Rules and Regulations'' section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this withdrawal in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposal rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule.

We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For the various statutes and executive orders that require findings for rulemaking, EPA incorporates the findings from the direct final rulemaking into this companion notice for the purpose of providing public notice and opportunity for comment. For further information, please see the information provided in the **ADDRESSES** section of this document.

List of Subjects in 40 CFR Part 131

Environmental protection, Antidegradation, Water quality standards.

Dated: September 9, 2008.

Stephen L. Johnson,

Administrator.

[FR Doc. E8–21463 Filed 9–12–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1989–0011; FRL–8715–2]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Berks Landfill Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region III is issuing a Notice of Intent to Delete the Berks Landfill Superfund Site (Site) located in Spring Township, Berks County, Pennsylvania, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), have determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under CERCLA.

DATES: Comments must be received by October 15, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1989–0011, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *E-mail: matzko.kristine@epa.gov.*
- *Fax:* 215–814–3002, Attn: Kristine Matzko (3HS21).
- *Mail:* EPA Region III, Attn: Kristine Matzko (3HS21), 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- *Hand delivery:* EPA Region III, Attn: Kristine Matzko (3HS21), 1650 Arch Street, Philadelphia, Pennsylvania 19103. Such deliveries are only accepted during business hours, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–1989–0011. 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 information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

Regional Center for Environmental Information, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, 215–814–5254. Business hours are Monday through Friday 8 a.m. to 5 p.m.

Township of Spring Municipal Office, 2800 Shillington Road, Reading, Pennsylvania 19608, 610–678–5393. Business hours are Monday through Friday 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Kristine Matzko, Remedial Project Manager, U.S. Environmental Protection Agency, Region III, (3HS21) 1650 Arch Street, Philadelphia, Pennsylvania 19103, 215–814–5719, e-mail *matzko.kristine@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of the Berks Landfill Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final Notice of Deletion which is located in the Rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties,

Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: September 5, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E8–21306 Filed 9–12–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 419

RIN 1006–AA48

Operation of the Truckee River and Other Reservoirs

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Reclamation is proposing this rule to comply with the requirements of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act. The Settlement Act requires that the operating agreement negotiated with the States of California and Nevada for the operation of Truckee River Reservoirs (the five Federal reservoirs in the Truckee River basin) be promulgated as a Federal Regulation.

DATES: Comments must be received by Reclamation no later than November 14, 2008.

ADDRESSES: You may submit comments, identified by 1006–AA48, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Search on docket identification number BOR–2008–0006 when submitting comments on this rule.
- *Mail:* Kenneth Parr, Bureau of Reclamation, 705 N. Plaza St., Carson City, NV 89701.

FOR FURTHER INFORMATION CONTACT: Kenneth Parr, Bureau of Reclamation, 705 N. Plaza St., Carson City, NV 89701; telephone (775) 882–3436; or for a copy of the TROA, visit the TROA Web site at *http://www.usbr.gov/mp/troa/.*

SUPPLEMENTARY INFORMATION: Section 205(a)(2) of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act, title II of Public Law 101–618, November 16, 1990 (Settlement Act or Act), directs the Secretary of the Interior (Secretary) to negotiate an operating agreement that must:

- Satisfy all applicable dam safety and flood control requirements;
- Provide for the enhancement of spawning flows available in the Lower Truckee River for the Pyramid Lake fishery (endangered cui-ui, and threatened Lahontan cutthroat trout) in a manner consistent with the Secretary's responsibilities under the Endangered Species Act, as amended (ESA);
- Carry out the terms, conditions, and contingencies of the Preliminary Settlement Agreement between the Pyramid Lake Paiute Tribe (Pyramid Tribe) and Sierra Pacific Power Company (Power Company), as modified by the Ratification Agreement of the United States (PSA);
- Ensure that water is stored in and released from Truckee River Reservoirs to satisfy the exercise of water rights in conformance with the Orr Ditch and Truckee River General Electric decrees, except for any rights voluntarily relinquished by the parties to the operating agreement; and
- Minimize the Secretary's costs associated with operation and maintenance of Stampede Reservoir.

The Act further provides that the following may be addressed in the operating agreement:

- Administration of the operating agreement;
- Means of assuring compliance with PSA;
- Operations of Truckee River system that will not change;
- Operations and procedures for using Federal facilities to meet the Secretary's responsibilities under ESA;
- Methods of reducing likehood that Lake Tahoe will drop below its natural rim and improving the efficient use of Lake Tahoe during extreme drought situations;
- Procedures for managing and operating Federal reservoirs;
- Procedures for operating Federal reservoirs for instream beneficial uses;
- Operation of non-Federal reservoirs in the Truckee River basin to the extent owners of affected storage rights become parties to the operating agreement; and
- Procedures and criteria for implementing California's allocation of Truckee River water.

The Truckee River Operating Agreement (TROA) will, among other things: (1) Enhance conditions for threatened and endangered fishes in the Truckee River and its tributaries; (2) increase municipal and industrial (M&I) water supplies to provide drought protection for the Truckee Meadows (the Cities of Reno and Sparks, Nevada, metropolitan area); (3) improve river water quality downstream from the City of Sparks and below Derby Dam; (4) enhance stream flows and recreational opportunities in the Truckee River basin; and (5) provide procedures for implementing the interstate allocation of Lake Tahoe basin and Truckee River basin waters between Nevada and California. While the Settlement Act also confirms the allocation of the waters of the Carson River and its tributaries between California and Nevada represented by the Alpine Decree, TROA by its terms does not affect the Carson River.

Section 205(a)(9) of the Settlement Act requires the Secretary to satisfy the requirements of the National Environmental Policy Act. Because the State of California is a mandatory signatory party, it is also necessary to comply with the California Environmental Quality Act. Consequently, the Department of the Interior and the California Department of Water Resources jointly prepared an Environmental Impact Statement/Environmental Impact Report (EIS/EIR). The Final EIS/EIR concludes that TROA will:

- Provide better conditions for threatened Lahontan cutthroat trout and endangered cui-ui in many reaches of the Truckee River and its tributaries;
- Provide greater potential for enhancing riparian vegetation along some reaches of the Truckee River in median hydrologic conditions and along all mainstem and tributary reaches under dry and extremely dry hydrologic conditions; and
- Enhance riparian habitat along some mainstem and tributary reaches under wet and median hydrologic conditions and along most mainstem reaches in dry and extremely dry hydrologic conditions.

Section 205(a)(9) also provides that the Secretary may not become a party to TROA if the Secretary determines that the effects of TROA, together with cumulative effects, are likely to jeopardize any threatened or endangered species or be adverse to designated critical habitat of such species. The Final EIS/EIR concludes that implementation of TROA will not adversely affect LCT or cui-ui, but in fact is likely to benefit both species. The U.S. Fish and Wildlife Service has concurred in that determination through the consultation process required by Section 7 of the Endangered Species Act of the 1973, as amended, 16 U.S.C. Sec. 1531 at *et seq.*

Since TROA is the result of negotiations and agreement among at least the five mandatory signatory parties and must be promulgated as a Federal regulation, the regulation we are proposing today would incorporate by

reference the agreement exactly as negotiated. After extensive discussions with the Office of the Federal Register, we have determined that incorporating TROA by reference is the best method to preserve the integrity of the Code of Federal Regulations while accommodating the negotiating parties and the requirements of the Act. Incorporation by reference is a workable solution because the agreement is readily available to all of the concerned parties and will be easy for other interested parties to consult on various websites or at Reclamation's offices.

I. Background

The United States has been extensively involved in litigation over Federal and Indian rights to the use of the waters of the Truckee River in California and Nevada since the early 1900's. In 1913 the United States filed a suit claiming rights to the use of such waters for multiple purposes, including supply for the first Reclamation Project in the nation and for use on the Pyramid Lake Paiute Indian reservation. The subject matter of Truckee River litigation over the years has involved Indian trust and reserved rights, domestic and municipal uses of water stored in Federal projects, a proposed California/Nevada compact for an interstate allocation of the River's water, Endangered Species Act claims, and rights for use in irrigation projects. Multiple lawsuits concerning those subjects became very active in the early 1970s and continued significantly until the early 1990s. By that time, it had become clear that the only hope for resolution of the many conflicts over the use of Truckee River water was through a regional settlement which would provide for cooperative uses of the water stored in Federal reservoirs on the Truckee River to meet the demands and right of all users. Efforts to effect changes in those rights through litigation had proven completely unavailing.

In November of 1990, Congress enacted the Settlement Act to provide authorization for measures which if carried out would serve to resolve many of the longstanding disputes and Federal litigation among multiple parties concerning the rights to use of the waters of the Truckee and Carson Rivers in Nevada and California. Those parties include the States of Nevada and California and other parties to the negotiated agreement which constitutes this rule.

The Truckee River originates at the outlet of Lake Tahoe in California and flows to Pyramid Lake, a terminal desert lake in northwestern Nevada. The flow of the Truckee River was first regulated in 1870 by construction of a private timber crib dam at the outlet of Lake Tahoe. A number of dams, Federal and private, have since been constructed on tributaries to the Truckee River in California to create water storage and flood control reservoirs and regulate river flow. Flows of the river have historically been utilized for diverse purposes, including generation of hydropower, irrigation of agricultural lands, and municipal and industrial water supplies.

Newlands Project

The Newlands Federal Reclamation Project was authorized in 1902 and constructed under the Federal Reclamation Act, 32 Stat. 388. Derby Diversion Dam diverts water from the Truckee River through the Truckee Canal for use on the Newlands Project's Truckee Division. Truckee River water diverted at Derby Dam is also stored in Lahontan Reservoir in the Carson River basin as a supplemental source of water for the Carson Division of the Newlands Project.

In 1967, the Secretary of the Interior issued regulations called Operating Criteria and Procedures (OCAP), referred to in the rule as Truckee Canal Diversion Criteria, to limit diversions of Truckee River water to the Newlands Project, 32 FR 3098, February 21, 1967. Revised versions of OCAP have been in effect since that time.

Court Decrees

Three Federal court actions, United States v. Truckee River General Electric Co., No. 14861 (N. D. Calif. 1915), now designated Case No. 68-cv-643 (E. D. Calif.) (TRGE), *United States* v. *Orr Water Ditch Company, et al.*, In Equity No. A3, Case No. 73-cv-00003 (D. Nev. 1944) (Orr Ditch), and *United States* v. *Alpine Land* and Reservoir Co., *et al.*, Civ. No. D–183, Case No. 73-cv-183 (D. Nev. 1980) (Alpine) were brought to confirm a water supply for the Newlands Project and (in Orr Ditch) for use on the Pyramid Lake Paiute Indian Reservation. Each case resulted in a decree setting forth the relative water rights in the Truckee River and Carson River basins, respectively.

The TRGE Decree in 1915 granted the United States an easement for, and the right to operate, Lake Tahoe Dam. It also required that releases of water be maintained to satisfy, but not exceed, certain flows in the Truckee River at Floriston, California (Floriston Rates). Floriston Rates are rates of flow in the Truckee River at the California-Nevada State border of 300 to 500 cubic feet per second (cfs) depending on month and elevation of water in Lake Tahoe.

The 1944 Orr Ditch Decree determined the relative rights to use Truckee River water in Nevada and for Power Company's run-of-the-river hydroelectric power plants. Floriston Rates, when maintained, satisfy water rights confirmed by the Orr Ditch Decree. The Orr Ditch Decree also confirmed water rights to the United States for use on the Pyramid Lake Paiute Indian Reservation (claims 1 and 2), to the United States for use on the Newlands Project subject to water duties and regulations of the Secretary of the Interior (claim 3), and to the United States for the use of the top six feet of Lake Tahoe as a reservoir (claim 4). The Orr Ditch Decree further recognized the 1935 Truckee River Agreement (TRA), an operating agreement for the Truckee River among Power Company, Truckee-Carson Irrigation District (TCID), Washoe County Water Conservation District (WCWCD or Conservation District), the United States Department of the Interior, and individual Truckee River water users (parties of the fifth part) as binding among those parties.

The 1980 Alpine Decree determined the rights, relative priorities, and water duties for all Carson River water users in California and Nevada.

Reservoirs

There are five Federal reservoirs in the Truckee River basin, collectively referred to as Truckee River Reservoirs. They are: The reservoir formed by the dam at the outlet of Lake Tahoe, which regulates the top six feet of the lake; Boca Reservoir on the Little Truckee River, constructed in 1937 and operated under contract by WCWCD; Prosser Creek Reservoir, constructed on Prosser Creek in 1967, as part of the Washoe Project; Stampede Reservoir, constructed on the Little Truckee River in 1970, also as part of the Washoe Project; and Martis Creek Reservoir, a United States Army Corps of Engineers flood control facility, constructed on Martis Creek in 1971.

The 1959 Tahoe-Prosser Exchange Agreement (TPEA), executed by parties to TRA, provides for an exchange of water between Lake Tahoe and Prosser Creek Reservoir to maintain a minimum flow in the Truckee River immediately downstream from Lake Tahoe when releases from Lake Tahoe would not otherwise be required. This exchange protects water for Floriston Rates while providing flows downstream from Lake Tahoe for fish purposes.

The water in Stampede Reservoir is dedicated for the benefit of Pyramid Lake fishes (endangered cui-ui and

threatened Lahontan cutthroat trout) by determination of the Secretary. The Secretary's determination was upheld by the Federal courts in *Carson-Truckee Water Conservancy District* v. *Watt,* 537 F. Supp. 106 (D. Nev. 1982), aff'd 741 F. 2d 257 (9th Cir. 1984).

Martis Creek Reservoir is operated by the U.S. Army Corps of Engineers exclusively for flood control purposes.

In addition to the Federal reservoirs, there are two private reservoirs in the Truckee River basin: Donner Lake, formed by a dam on Donner Creek, and Independence Lake, formed by a dam on Independence Creek. Both Donner and Independence creeks are tributary to the Truckee River. The water right for Donner Lake is owned by TCID and the Truckee Meadows Water Authority (Water Authority) as tenants in common. The water rights for Independence Lake are owned by Water Authority.

Settlement Act

The Settlement Act was enacted and signed into law in 1990, in part to facilitate the resolution of disputes and settlement of litigation over use of Truckee River water among multiple parties, including the States of Nevada and California. Section 204 of the Act provides for an interstate allocation of waters of the Lake Tahoe and Truckee River basins between California and Nevada similar to the interstate allocation negotiated by the two states in the 1960s and confirms the allocation of waters of the Carson River and its tributaries between the states represented by the Alpine Decree. Section 205(a) of the Act directs the Secretary to negotiate an agreement for operation of Truckee River Reservoirs with California and Nevada, and other parties as determined appropriate, to among other things, implement the provisions of the PSA. Because the Act directs that the negotiated agreement (TROA) implement the PSA, the Pyramid Tribe and Water Authority are mandatory signatories of the negotiated agreement along with the United States, California, and Nevada. Subsequent to the Settlement Act, Power Company on June 11, 2001, sold its water utility business to Water Authority and assigned to Water Authority all of its rights and responsibilities under the PSA and TROA. Accordingly, Water Authority is now the mandatory signatory party to TROA.

Water Quality Settlement Agreement

Also subsequent to the Settlement Act, the 1996 Truckee River Water Quality Settlement Agreement (WQSA) was entered into by the cities of Reno and Sparks, Nevada, Washoe County, Nevada, the United States Department of the Interior, the United States Department of Justice, the United States Environmental Protection Agency, the Nevada Division of Environmental Protection, and the Pyramid Tribe. In settlement of certain litigation over the proposed expansion of the Truckee Meadows Water Reclamation Facility, WQSA established a program to purchase and dedicate Truckee River water rights for stream flow purposes by the United States and the Truckee Meadows communities (Reno-Sparks metropolitan area) in Nevada. The purpose of the water rights purchase program is to improve water quality in the Truckee River, particularly below Derby Dam. A final Environmental Impact Statement on the Federal water rights acquisition portion of WQSA was published in October 2002, and a Record of Decision was issued in December 2002. Water made available to serve the dedicated water rights may, to the extent possible, be stored in Truckee River Reservoirs and will be managed for water quality purposes by the dedicating parties and by the Pyramid Tribe. TROA accommodates implementation of the WQSA and provides for the storage of Water Quality Credit Water in Truckee Reservoirs.

II. Overview of Rule

Main Provisions of the Negotiated Agreement

The negotiated agreement (TROA), which constitutes the rule, will be incorporated by reference. It provides the framework, rules, and procedures for the operation of Truckee River Reservoirs, Independence Lake, and Donner Lake, to the extent Donner Lake is made available, and for management of flows in the Truckee River, with more flexibility than is available under current operations. It also provides for implementation of the interstate allocation of waters of the Lake Tahoe and Truckee River basins between California and Nevada, as provided in sections 204 and 210(a)(2) of the Act. The maintenance of Floriston Rates and Reduced Floriston Rates is the basic foundation of TROA.

TROA retains most current procedures and management authorities for operating Truckee River Reservoirs, including maintaining the storage priorities for project water (water associated with the license or permit for a particular reservoir) and water dedicated to maintenance of Floriston Rates. Applicable flood control and safety of dams requirements will continue to be in effect. Perhaps most importantly, Truckee River Reservoirs will continue to be operated to satisfy the exercise of water rights in conformance with the Orr Ditch and TRGE decrees, except for any water rights that are voluntarily relinquished by the signatory parties. The Federal Water Master will continue to assure that Truckee River operations satisfy the exercise of water rights recognized by the Orr Ditch Decree.

How TROA Would Be Different From Current Operations

TROA Provides for the Establishment of Credit Water

Article Seven of TROA prescribes rules and procedures that provide opportunities for signatory parties, as authorized by changes to water rights under applicable State law, to retain in storage as credit water in Truckee River Reservoirs, Independence Lake, and Donner Lake, to the extent Donner Lake is made available, all or a portion of the water that the party would otherwise be entitled to divert for use downstream under the party's water rights. A person initially not a signatory to TROA could also have an opportunity to store credit water, to the extent storage space is available, by agreeing to be bound by the same rules as a signatory party. Any party storing credit water will be required to have a storage contract with the owner of the reservoir in which the credit water will be stored unless otherwise provided in TROA.

Two of the various categories of credit water, M&I Credit Water and Fish Credit Water, will be created as provided for in the PSA. M&I Credit Water will be established by Water Authority for use as a drought supply. Fish Credit Water will be established by the United States and Pyramid Tribe for the benefit of Pyramid Lake fishes. A portion of Fish Credit Water can also be designated as Joint Program Fish Credit Water, a category of credit water which will be managed by California for purposes of stream flow and reservoir levels in California.

TROA establishes priorities for each category of credit water and accounting procedures relative to its storage, release, spill, evaporation, and exchange. Relative priorities for various types of credit water and credit water operations are important for administration of TROA when concurrent uses or potentially conflicting operations are scheduled or requested.

TROA Provides for Exchanges of Credit Water

Article Eight of TROA provides for water, particularly credit water, to be exchanged among Truckee River Reservoirs, Independence Lake, and Donner Lake, to the extent Donner Lake is made available, in accordance with prescribed rules and limitations. An exchange of water between reservoirs can be accomplished in several ways. The provisions for exchanging water greatly enhance and increase the flexibility of system operations. The increased flexibility provided by TROA through the various categories of credit water and opportunities for exchanges facilitates more efficient use of the existing available water supply to more effectively serve the many, and often competing, beneficial uses.

Other Provisions of TROA

Article Two of TROA establishes an Administrator to administer its provisions and a Special Hearing Officer to resolve disputes which may arise under TROA. The Administrator is responsible, among other things, for: Implementing the provisions of TROA and operating the designated reservoirs consistent with stated general operational principles set out in Article One; integrating the operational schedules submitted by the parties under Article Eleven; and accounting for the various categories of water under procedures developed by the Administrator under Article Three. The Federal Water Master under the Orr Ditch Decree will retain full authority to ensure that Orr Ditch Decree water rights are fully enforced, and the Administrator will have authority and responsibility to provide an acceptable remedy if the Orr Ditch water rights of a person not signatory to TROA are adversely affected by a TROA operation. TROA provides that the Federal Water Master for the Orr Ditch Decree in office when TROA enters into effect will be the first TROA Administrator, and the names of any subsequent nominees for the position of Administrator must be submitted to the Orr Ditch Court for approval. TROA recognizes that disputes arising under the Orr Ditch Decree remain subject to the jurisdiction of the Orr Ditch Court and the Federal Water Master.

TROA also:

- Incorporates in Article Four the miscellaneous provisions of the PSA not included elsewhere in TROA;
- Provides in Article Five for operation of water to maintain Floriston Rates and of project water used for the benefit of threatened and endangered Pyramid Lake fishes;
- Sets forth in Article Six the procedures for implementing and accounting for the Truckee River basin and Lake Tahoe basin allocations;
- Establishes under Article Nine criteria for beneficial uses of water in California for stream flows and reservoir levels for fish and wildlife, and for recreation;
- Establishes in Article Ten criteria for the design and location of water wells in the Truckee River basin in California;
- Sets forth in Article Twelve conditions which must be satisfied for TROA to enter into effect, identifies other provisions of the Act which become effective when TROA enters into effect, and establishes a date by which TROA, and the other provisions of the Act contingent upon TROA, must enter into effect;
- Makes clear in Article Thirteen that TROA is the basis of reservoir operations, provides for a periodic review of such operations, and that any future change to TROA will require the same process used for its original negotiation; and
- Includes in Article Fourteen standard statements required in any contract or agreement signed by the United States or the State of California, identification of responsible parties to receive notices, and criteria for future assignments of interests.

III. Procedural Requirements

1. Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget (OMB) has determined that this rule is not a significant rule and has not reviewed it under the requirements of Executive Order 12866. We have evaluated the impacts of the rule as required by E.O. 12866 and have determined that it is not a significant regulatory action. The results of our evaluation are given below.

(1) This rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.

TROA is a mechanism negotiated by its signatories to facilitate more flexibility in water use and storage and more effective coordination of reservoir operations on the Truckee River. The increased flexibility and more effective coordination of operations will provide a more stable water supply for Reno, Sparks, and Washoe County, Nevada, will enhance stream flow in the Truckee River below Derby Dam for threatened and endangered fishes, and will improve water quality.

The credit water and exchange provisions of TROA allow parties to more efficiently use the water resource and, more particularly, realize more efficient and effective utilization of their own water rights. Historically, senior water right holders could not always fully divert the water to which they were entitled under their water right because of their inability to use or store the water when available. At times some junior water right holders, including those on the Newlands Project, have been able to benefit from this water, although most has ultimately flowed to Pyramid Lake. The additional storage options made available under TROA will permit senior water right holders to more fully exercise their water rights. To the extent the exercise of senior Orr Ditch Decree water rights under TROA makes less water available to junior water right holders than has in the past been available because the senior rights could not be fully exercised, there is no unlawful injury to junior water right holders, including those on the Newlands Project.

The total cost of implementing TROA is estimated to be approximately $15.8 million annually ($2.1 million for storage fees, O&M, and administration; $1.4 million in lost income from water transfers; and approximately $12.3 million annually for the purchase of water rights until 10,000 acre feet of water rights have been acquired to meet future water demand). Operation of the Federal reservoirs under TROA will result in new storage contracts which will reflect average storage and operation costs of approximately $1.5 million annually. The administration costs associated with implementing TROA by the Administrator is estimated to be $600,000 annually to be shared by the Federal government and the States of California and Nevada. Under TROA irrigation water rights acquired by Water Authority and others are to be transferred in accordance with applicable State law to meet water conservation and water quality objectives. This reduction of irrigation water rights results in a loss of approximately 100 jobs and the loss of $1.4 million in personal income. Water rights will also be purchased from willing sellers to meet future water demand. The cost of such purchases is approximately $12.3 million annually based on current market value of water rights. Because TROA implementation actions rely on market mechanisms, any

reductions in economic activity or productivity, including employment or income reductions occasioned by the sale of irrigation water rights and reduced agricultural activity, will be fully compensated by the monetary or other compensation derived from the sale of the water rights.

One of the benefits of TROA would be the avoided costs to the water users in the area of developing additional water storage facilities to meet increasing water demands in the region. The construction costs and O&M for new water storage facilities to meet that demand would be approximately $5 million annually. In addition to the avoided costs from implementing TROA, there is the additional benefit of supporting the Reno-Sparks economy by providing the storage capacity for M&I water demand in the future. It is estimated that in 2033, through the operation of TROA, the stored M&I water will support approximately 74,000 jobs and approximately $2.6 billion in associated personal income annually. There are also the annual nonmonetary benefits of improving water quality, improving fish and wildlife habitat, and meeting Indian trust responsibilities. Accordingly, TROA is not an economically significant rule under E.O. 12866.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency. Bureaus within the U.S. Department of the Interior are the only Federal agencies directly affected by the agreement. For instance, all TROA actions are specifically subordinated to Army Corps of Engineers (Corps) flood control criteria so that the Corps is free to adjust them as necessary apart from this regulation. In addition, TROA specifically provides that any use of the Corps' Martis Creek Reservoir for a TROA purpose, e.g., for conservation or credit water storage, would require a written agreement with the Corps. Upon TROA taking effect, Section 206(c) of the Settlement Act, which pertains to water use on the U.S. Naval Air Station, Fallon, Nevada, shall also become effective. This is a consequence of the Settlement Act, and not a direct effect of the provisions of TROA.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The rule is a negotiated agreement, and it directly affects only the signatories of that agreement.

(4) OMB has determined that this rule does not raise novel legal or policy issues. TROA explicitly incorporates or accommodates all relevant laws and judicial decisions. By law TROA cannot have an adverse effect on any other person's water rights under the Orr Ditch or Truckee River General Electric decrees, and any modifications to those decrees necessary to implement TROA must be approved by the two courts with jurisdiction over the two decrees before TROA can become effective. TROA is required to be consistent with the decision in *Pyramid Lake Paiute Tribe* v. *Morton,* 354 Fed. Supp. 252 (D.D.C. 1973) and cannot be inconsistent with the Secretary's responsibilities under the Endangered Species Act.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The rule will not affect a substantial number of small entities. TROA directly affects only its signatories. While TCID may be considered a small entity, TROA neither directly affects TCID or the water rights of the individual water right holders on the Newlands Project. Specifically, the parties likely to be directly affected by TROA are:

- U.S. Department of the Interior;
- State of California;
- State of Nevada;
- Pyramid Lake Paiute Tribe;
- Truckee Meadows Water Authority;
- Washoe County Water Conservation District;
- City of Reno, Nevada;
- City of Sparks, Nevada;
- City of Fernley, Nevada;
- Washoe County, Nevada;
- Sierra Valley Water Company;
- Carson-Truckee Water Conservancy District;
- North Tahoe Public Utilities District; and
- Truckee Donner Public Utilities District.

Sierra Pacific Power Company will join in the execution of TROA for a limited purpose through a Special Joinder.

Water operations of Water Authority, Conservation District, City of Reno, City of Sparks, and Washoe County, Nevada, are all intertwined within one geographic area in western Nevada. The criterion for a small entity is less than 50,000 population. All of these entities are located within Washoe County, Nevada. The population of Washoe County is approximately 346,000 people (2000 Census). The Reno-Sparks division of Washoe County has a population of approximately 256,000. Only if Conservation District, a taxing authority water purveyor of M&I and irrigation water supplies, were considered a separate entity would it be considered small as it has 33,000 people within its taxing jurisdiction; Water Authority serves 77,000 customers. The City of Fernley, in Lyon County, with a population of approximately 8,600 (2000 Census), would be considered small.

Carson-Truckee Water Conservancy District's office is located in Reno, Nevada, and the District has no service population. It is authorized under Nevada State statutes to collect fees and taxes to do conservation work.

North Tahoe Public Utility District, Tahoe Vista, Placer County, California, has a service population of 5,300 and, therefore, is considered a small entity. It consists of the Sewer and Water Department, Recreation and Parks Department, North Tahoe Beach Center, and the North Tahoe Community Conference Center.

Truckee Donner Public Utilities District, Truckee, California, is a non-profit utility providing electric and water service in the Truckee area. The District serves 12,000 electric customers and 12,000 water service connections. It is considered a small entity.

Sierra Valley Water Company is a small water purveyor in Sierra and Plumas Counties, California. It provides domestic and irrigation water to 29 customers. It is, therefore, considered small.

Pyramid Lake Paiute Indian Reservation is located in Washoe County, with approximately 1,734 tribal members residing on the reservation. Indian tribes are not covered by the Regulatory Flexibility Act.

Power Company's service territory covers approximately 50,000 square miles in northern Nevada including the cities of Reno, Sparks, and the Lake Tahoe area of northeastern California. It is a wholly-owned subsidiary of Sierra Pacific Resources. It employs in excess of 1,100 people and services approximately 500,000 electric and gas customers. It has assets in excess of $2.5 billion and revenue in excess of $1 billion. It is not, therefore, considered a small entity.

Of the most likely signatories, only five are considered to be small entities, and all who enter into TROA will be willing signatories. There is, therefore, not a significant effect on a substantial number of small entities.

3. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business

Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The availability of additional water management options is expected in the long term to lower overall operation costs.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. TROA has only regional effects and will not have national or international implications.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments in the aggregate, or on the private sector, of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The costs of the new water management opportunities made available by the agreement will only accrue to the signatories, and the costs will be small relative to the benefits and will apply only if a signatory avails itself of the options under the agreement. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, the rule does not have significant takings implications. The provisions of the agreement are accepted voluntarily by the signatories and the exercise of water rights under existing decrees is expressly provided for. Therefore, this rule will not result in a taking of private property, and a takings implication assessment is not required.

6. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The States of California and Nevada are signatories to TROA and participated fully in negotiations that culminated in the agreement. TROA would have two principal effects on the governments of the States of California and Nevada.

First, when TROA enters into effect, an allocation of the waters of the Lake Tahoe and Truckee River basins, and confirmation of the allocation of the Carson River and its tributaries represented by the Alpine Decree, automatically enters into effect in a manner similar to an interstate compact. Generally, these allocations limit the amount of water that can be used or diverted from Lake Tahoe basin for use within the basin under procedures of the two States, and the amount of water that can be used or diverted from the California portions of the Truckee River basin and the Carson River and its tributaries under relevant decrees and procedures of the State of California. The balance of the water of these two rivers that flows into Nevada can be allocated pursuant to the water allocation procedures of the State of Nevada and various court decrees. Generally, these allocations were negotiated by and agreed to by the two States and, though not required by law to do so, both States have voluntarily abided by their provisions pending passage of Public Law 101–618, initially, and pending implementation of TROA, subsequently. TROA merely aids in the implementation of the allocation of the waters of the Lake Tahoe and Truckee River basins provided for in the Settlement Act. By signing TROA, the two States will, effectively, be binding themselves to this interstate allocation.

Secondly, there are modest (i.e., expected to be approximately $600,000 in total) financial requirements for funding the annual administration of TROA. Subject to the limits on the authority in the constitutions of the two States to commit future appropriations, it is reasonable to expect the two States to pay their allocated shares of the funding. By signing TROA, the two States would be signaling their intention to secure funding for their shares of the administration of TROA. Neither of these effects is considered to rise to the level of significance requiring a Federalism Assessment. The rule, which governs only the responsibilities of the signatories, does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule provides for the application of State law in its implementation in the same manner as does the Settlement Act. Therefore, a Federalism Assessment is not required.

7. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

a. Does not unduly burden the judicial system.

b. Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

c. Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

8. Consultation With Indian Tribes (E.O. 13175)

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects, within the requirements of the Executive Order, on Federally recognized Indian tribes.

Indian trust resources are legal interests in property or natural resources held in trust by the United States for Indian Tribes or individuals. The Secretary of the Interior is the trustee for the United States on behalf of Indian Tribes. Examples of trust resources are lands, minerals, hunting and fishing rights, and water rights. Indian trust resources have been assessed in consultation with the following tribes during the development of TROA: Pyramid Lake Paiute Tribe—Pyramid Lake Indian Reservation in Nevada; Reno-Sparks Indian Colony—Reno and Hungry Valley, in Nevada; Fallon Paiute Shoshone Tribe—Fallon Paiute-Shoshone Reservation and Fallon Colony in Nevada; and Washoe Tribe of Nevada and California—colonies in Nevada and in California with cultural interests at and near Lake Tahoe.

For the Pyramid Tribe, flow in the Truckee River below Derby Dam and discharge to Pyramid Lake will increase slightly under TROA. With increased flow and the increased capacity to manage Truckee River water, TROA will: Assist in improving lower river water quality; enhance slightly the elevation of Pyramid Lake; enhance the riparian canopy; assist in stabilizing the lower river; enhance recreational opportunities at Pyramid Lake; enhance spawning opportunities for cui-ui and LCT; and enhance river habitat for Pyramid Lake fishes. In addition, the exercise of Truckee River agricultural and M&I water rights below Derby Dam, including those of the Pyramid Tribe, will continue to be satisfied. For Reno-Sparks Indian Colony, TROA will have no effect on the exercise of Truckee River water rights. The Fallon Paiute Shoshone Tribe will receive a full water supply with the same frequency as at present. TROA will have no effect on flows of the Carson River or on resources of the Washoe Tribe.

The Federal Government negotiated TROA on a government-to-government

basis with the Pyramid Tribe, as well as with the States of California and Nevada. As a result, TROA incorporates the principles of sovereignty for each sovereign signatory.

9. Paperwork Reduction Act

This rule does not contain any requirement for information collection by a Federal entity or Federal employee, and a submission under the Paperwork Reduction Act (PRA) is not required.

There are several provisions of TROA which require information to be submitted by the signatory parties to the TROA Administrator. With respect to the Paperwork Reduction Act, it is important to note that the TROA Administrator is not a Federal employee and the Office of the TROA Administrator is not a Federal entity. The signatory parties have agreed to provide to the Administrator the information requested and necessary for proper implementation and administration of TROA. Thus, even though there are requirements to provide information contained in the negotiated TROA and, as required by Congress, are provisions of the rule, the information is not sought or requested by a Federal employee or a Federal agency. Accordingly, the subject provisions are not information collection requirements for purposes of the Paperwork Reduction Act.

10. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. The Final EIS/EIR has concluded that implementation of TROA would not significantly affect the quality of the human environment and that no unavoidable adverse impacts are expected as a result of implementing TROA. No mitigation measures are identified or required. Because of exchanges and storage agreements that are components of TROA, a more assured long-term drought water supply for Truckee Meadows would be obtainable, and improved flow conditions would be possible for Pyramid Lake fishes and aquatic species in general. California's allocation of water for M&I purposes in the long run would be assured and could be utilized in the short run to improve environmental conditions in the Truckee River. Compliance with NEPA will be completed before the final rule is issued.

11. Data Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

12. Effects on Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Analysis contained in the Final EIS/EIR shows that under TROA, hydropower generation and gross revenues are about 3.5 percent less under wet hydrologic conditions than under current conditions due to the increased conservation and improved water quality applications of TROA; about 6.0 percent less in median hydrologic conditions, and about 55.0 percent greater in dry hydrologic conditions. Net reduced hydroelectric power generation, if any, resulting from implementation of TROA would be compensated consistent with the provisions of the Agreement.

13. Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

a. Be logically organized;

b. Use the active voice to address readers directly;

c. Use clear language rather than jargon;

d. Be divided into short sections and sentences; and

e. Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the ''**ADDRESSES**'' section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 43 CFR Part 419

Agriculture, Irrigation, Natural resources, Endangered and threatened species, Reclamation, Reservoirs, Water resources, Water supply, Incorporation by reference.

Dated: August 28, 2008.

Kameran L. Onley,

Acting Assistant Secretary—Water and Science.

For the reasons given in the preamble, the Bureau of Reclamation proposes to add to title 43 of the Code of Federal Regulations a new part 419 to read as follows:

PART 419—OPERATION OF THE TRUCKEE RIVER AND OTHER RESERVOIRS

Sec.
419.1 What is the purpose of this part?
419.2 What are the definitions used in this part?
419.3 What general principles govern implementation of the TROA?
419.4 What are the specific provisions governing operations of the reservoirs?

Authority: Pub. L. 101–618 (104 Stat. 3289, 3294).

§ 419.1 What is the purpose of this part?

(a) This part satisfies the requirement of section 205(a)(5) of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act (Settlement Act) that the negotiated agreement for operation of Truckee River Reservoirs be promulgated as a Federal regulation. The Truckee River Operating Agreement (TROA), which is incorporated by reference into this part, is the agreement negotiated pursuant to section 205(a). 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. You may obtain a copy of TROA from the Area Manager, Bureau of Reclamation, 705 N. Plaza St., Carson City, NV 89701. You may inspect a copy at Bureau of Reclamation, 705 N. Plaza St., Carson City, NV 89701, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(b) This part implements the Settlement Act by providing for operation of the Truckee River Reservoirs and other reservoirs in a manner that:

(1) Implements California's allocation of Truckee River basin water and the Nevada and California allocations of Lake Tahoe basin water;

(2) Enhances fish, wildlife, and recreational beneficial uses of water in the Truckee River basin;

(3) Carries out the terms, conditions, and contingencies of the Preliminary

Settlement Agreement, as modified by the Ratification Agreement;

(4) Ensures that water is stored in, released from, and passed through Truckee River Reservoirs to satisfy the exercise of water rights in conformance with the Orr Ditch Decree and Truckee River General Electric Decree, except for rights voluntarily relinquished by any persons, or transferred under State law;

(5) Provides for the enhancement of spawning flows available in the Lower Truckee River for Pyramid Lake Fishes in a manner consistent with the Secretary's responsibilities under the Endangered Species Act, as amended;

(6) Satisfies all applicable dam safety and flood control requirements; and

(7) Minimizes the Secretary's costs associated with operation and maintenance of Stampede Reservoir.

§ 419.2 What are the definitions used in this part?

Act means the Truckee-Carson-Pyramid Lake Water Rights Settlement Act of 1990, title II, Pub. L. 101–618 (104 Stat. 3289, 3294).

Administrator means the individual appointed in accordance with sections 2.A.2 through 2.A.3 of the Truckee River Operating Agreement, incorporated by reference into this part.

Preliminary Settlement Agreement means that Agreement between the Pyramid Lake Paiute Tribe and Sierra Pacific Power Company of May 23, 1989, as subsequently modified and ratified by the United States.

TROA means the Truckee River Operating Agreement, which is incorporated by reference into this part.

Truckee River basin means the area which naturally drains into the Truckee River and its tributaries and into Pyramid Lake, including Pyramid Lake, but excluding the Lake Tahoe basin.

§ 419.3 What general principles govern implementation of the TROA?

The following are general operational principles which provide a framework for the Administrator in implementing the TROA. These general principles are intended to be consistent with the specific provisions of TROA, but if they conflict with those specific provisions, the specific TROA provisions control. Operations should meet all of the following criteria:

(a) Be conducted, consistent with the TROA and applicable legal requirements, so that the available water supply in the Truckee River basin satisfies, to the maximum extent possible, multiple beneficial purposes, including municipal and industrial, irrigation, fish, wildlife, water quality, and recreation purposes.

(b) Satisfy vested and perfected rights to use the water of the Truckee River and its tributaries, to the extent that water rights are scheduled to be exercised, and to the extent that water is lawfully available. This includes, but is not limited to, the exercise of water rights under the provisions of the Orr Ditch Decree, except as expressly provided in the Settlement Act and the TROA.

(c) Maintain minimum releases and, to the extent practicable consistent with existing water rights and the TROA, maintain enhanced minimum releases, preferred stream flows, and reservoir recreation levels as described in Article Nine of the TROA.

(d) Comply with applicable flood control requirements for Prosser Creek, Stampede, Boca, and Martis Creek Reservoirs.

(e) Comply with all applicable dam safety requirements.

(f) Use the integrated schedules developed by the Administrator through coordination with the scheduling parties.

(g) Respond to declared Federal, State, or local water-related emergencies presenting a clear and immediate danger to public health, life, property, or essential public services involving an upset or other unexpected occurrence to facilities and resources addressed in the TROA.

§ 419.4 What specific provisions govern operations of the reservoirs?

The specific provisions governing operations of the Truckee River Reservoirs and other reservoirs are contained in the TROA. The following table shows the location of the provisions in the TROA.

Provisions governing . . .	Are in the following sections of the TROA . . .
Recitals, Definitions	Recitals 1 through 9, Definitions (1) through (106).
Satisfaction of provisions of law, general operational principles, protection of water rights, imported water, remaining water of the Truckee River, and emergencies.	Sections 1.A through 1.F
Administration	Sections 2.A through 2.C.
Accounting, reporting, forecasting, and monitoring	Sections 3.A through 3.E.
Incorporation of certain provisions of the preliminary settlement agreement	Sections 4.A through 4.G.
Operation of Floriston Rate and Project Water	Sections 5.A through 5.E.
Truckee River and Lake Tahoe Basin Allocation and Accounting	Sections 6.A through 6.E.
Credit Water Establishment, Storage, and Conversion	Sections 7.A through 7.H.
Priorities and Rules for Operations Following Impoundment or Accumulation of Water in Reservoirs.	Sections 8.A through 8.V.
Beneficial Uses of Water for Instream Flows and Recreation in California	Sections 9.A through 9.F.
Design of Water Wells in the Truckee River Basin in California	Sections 10.A through 10.H.
Scheduling	Sections 11.A through 11.H.
Effectiveness of the TROA	Sections 12.A and 12.B.
Relation of TROA to Settlement Act, Adjustments to Operations and Changes to Agreement	Sections 13.A through 13.E.
Miscellaneous areas	Sections 14.A through 14.Q.

[FR Doc. E8–21177 Filed 9–12–08; 8:45 am]

BILLING CODE 4310–MN–P

Notices

Federal Register

Vol. 73, No. 179

Monday, September 15, 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

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Information Collection for the School Breakfast Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment a proposed information collection. The proposed collection is an extension of a currently approved collection for the School Breakfast Program.

DATES: Written comments must be submitted by November 14, 2008.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments maybe sent to: Ms. Lynn Rodgers-Kuperman, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 638, Alexandria, Virginia 22302. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov*, and follow the online instructions for submitting comments electronically.

All written comment(s) will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Room 638, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Request for additional information should be directed to: Ms. Lynn Rodgers-Kuperman at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Title: School Breakfast Program.

OMB Number: 0584–0012.

Expiration Date: March 31, 2009.

Type of Request: Extension of a currently approved collection.

Abstract: Section 4 of the Child Nutrition Act (CNA) of 1966 (42 U.S.C. 1772) authorizes the School Breakfast Program. The School Breakfast Program is a nutrition assistance program whose benefit is a breakfast meeting nutritional requirements prescribed by the Department in accordance with Section 4(e) of the CNA. That provision requires that ''Breakfast served by schools participating in the school breakfast program under this section shall consist of a combination of foods and shall meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research.'' The purpose of this Notice is to allow the public 60 days to comment on all reporting and recordkeeping burdens as indicated under the Estimated Total Annual Burden on Respondents below. The information being requested is required to administer and operate the program in accordance with the CNA. The program is administered at the state and school food authority levels, and the operations include the submission and approval of applications, execution of agreements, submission of claims, payment of claims, monitoring and providing technical assistance.

Affected Public: 57 State Agencies, 10,108 School Food Authorities, 72,145 Schools.

Estimated Number of Respondents: 82,310 respondents.

Estimated Number of Responses per Respondent: 15.

Estimated Total Annual Responses: 1,243,605.

Estimated Time per Response: .173 hours.

Estimated Total Reporting Annual Burden Hours: 213,594.

Number of Recordkeepers: 82,310.

Estimated Number of Responses per Respondent: 332.

Estimated Total Annual Responses: 27,326,920.

Estimated Time per Response: .17.

Estimated Total Annual Recordkeeping Burden Hours: 4,645,576.

Total Request Annual Reporting and Recordkeeping Burden Hours: 4,859,171.

Dated: September 9, 2008.

Jessica Shahin,

Acting Administrator, Food and Nutrition Service.

[FR Doc. E8–21439 Filed 9–12–08; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–918]

Steel Wire Garment Hangers From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 15, 2008.

FOR FURTHER INFORMATION CONTACT: Julia Hancock, 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) 482–1394.

Amendment to the Final Determination:

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended, (''the Act''), on August 14, 2008, the Department of Commerce (''Department'') published the final determination of sales at less than fair value (''LTFV'') in the antidumping investigation of steel wire garment hangers from the People's Republic of China (''PRC''). *See Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at*

Less Than Fair Value, 73 FR 47587 (August 14, 2008) (''*Final Determination*'').

On August 13, 2008, Petitioner [1] and the Greenberg Traurig Respondents [2] filed timely allegations that the Department made various ministerial errors in the *Final Determination* and requested, pursuant to 19 CFR 351.224, that the Department correct the alleged ministerial errors in the calculation of the margins for respondents. Additionally, on August 18, 2008, Shanghai Wells Hanger Co., Ltd. (''Shanghai Wells'') filed rebuttal comments with respect to the ministerial error allegations. No other parties in this proceeding submitted comments on the Department's final margin calculations.

A ministerial error is defined as an error ''in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the {Department} considers ministerial.'' *See* section 735(e) of the Act; *see also* 19 CFR 351.224(f).

After analyzing all interested party comments and rebuttals, we have determined, in accordance with section 735(e) of the Act and 19 CFR 351.224(e), that we made a ministerial error in our calculations for the final determination with respect to two mandatory respondents, Shanghai Wells and Shaoxing Metal Companies.[3] For a detailed discussion of this ministerial error, as well as the Department's analysis of this error and other allegations raised, *see* Memorandum to James C. Doyle, Director, Office 9, through Catherine Bertrand, Program Manager, from Julia Hancock, Senior Case Analyst: Antidumping Duty Investigation of Steel Wire Garment Hangers from the People's Republic of China: Analysis of Ministerial Error Allegations, (September X, 2008) (''Ministerial Error Memo'').

Additionally, in the *Final Determination*, we determined that several companies qualified for a separate rate. *See Final Determination*, 73 FR 47590–47591. The separate rate was the simple average of the margins for Shanghai Wells and the Shaoxing Metal Companies, the mandatory respondents that received a calculated margin. Because the rates of Shanghai Wells and the Shaoxing Metal Companies have changed since the *Final Determination*, we have recalculated the separate rate. The separate rate is now 55.31 percent. *See* Memorandum to the File from Irene Gorelik, Analyst; Investigation of Steel Wire Garment Hangers from the People's Republic of China: Final Simple-Averaged Margin for Separate Rate Companies, dated concurrent with this **Federal Register** notice.

Moreover, as a result of the Department's correction of this ministerial error, we note that the PRC-Wide entity rate must also be revised. In the *Final Determination*, the Department stated that ''as the single PRC-Wide rate, we have taken the simple average of: A) the weighted-average [4] of the calculated rates for the Shaoxing Metal Companies and Shanghai Wells, and B) a simple average of petition rates based on U.S. prices and normal values within the range of the U.S. prices and normal values calculated for the Shaoxing Metal Companies and Shanghai Wells.'' *See Final Determination*, 73 FR at 47591. We have continued using this methodology but due to the correction of the ministerial error, the resulting single rate applicable to the PRC-Wide entity is 187.25 percent. This rate applies to all entries of the merchandise under investigation with the exception of those entries from Shanghai Wells, the Shaoxing Metal Companies, and the separate-rate recipients. *See* Memorandum to the File from Irene Gorelik, Senior Analyst; Investigation of Steel Wire Garment Hangers from the People's Republic of China: Corroboration Memorandum for the Amended Final Determination, dated concurrent with this **Federal Register** notice.

Therefore, in accordance with section 735(e) of the Act, we are amending the final determination of sales at LTFV in the antidumping duty investigation of steel wire garment hangers from the PRC. After correcting this ministerial error, the revised final weighted-average dumping margins are as follows:

STEEL WIRE GARMENT HANGERS FROM THE PRC—AMENDED DUMPING MARGINS

Exporter & producer	Weighted-average deposit rate
Shanghai Wells Hanger Co., Ltd	15.83%
Shaoxing Metal Companies:	
Shaoxing Gangyuan Metal Manufactured Co., Ltd	94.78
Shaoxing Andrew Metal Manufactured Co., Ltd	
Shaoxing Tongzhou Metal Manufactured Co., Ltd	
Company ''X''	
Jiangyin Hongji Metal Products Co., Ltd	55.31
Shaoxing Meideli Metal Hanger Co., Ltd	55.31
Shaoxing Dingli Metal Clotheshorse Co., Ltd	55.31
Shaoxing Liangbao Metal Manufactured Co. Ltd	55.31
Shaoxing Zhongbao Metal Manufactured Co. Ltd	55.31
Shangyu Baoxiang Metal Manufactured Co. Ltd	55.31
Zhejiang Lucky Cloud Hanger Co., Ltd	55.31
Pu Jiang County Command Metal Products Co., Ltd	55.31
Shaoxing Shunji Metal Clotheshorse Co., Ltd	55.31
Ningbo Dasheng Hanger Ind. Co., Ltd	55.31
Jiaxing Boyi Medical Device Co., Ltd	55.31
Yiwu Ao-Si Metal Products Co., Ltd	55.31
Shaoxing Guochao Metallic Products Co., Ltd	55.31

[1] M&B Metal Products Company, Inc. (''Petitioner'').

[2] The Greenberg Traurig Respondents are: United Wire Hanger Corporation; Laidlaw Company; Zhejiang Lucky Cloud Hanger Co., Ltd.; Shangyu Baoxiang Metal Product Co., Ltd.; Shaoxing Dingli Metal Clotheshorse Co.; Shaoxing Liangbao Metal Products Co., Ltd.; Shaoxing Meideli Metal Products Co., Ltd.; Shaoxing Shunji Metal Clotheshorse Co., Ltd.; and Shaoxing Zhongbao Metal Manufactured Co., Ltd.

[3] The Shaoxing Metal Companies are: Shaoxing Gangyuan Metal Manufactured Co., Ltd. (''Gangyuan''), Shaoxing Andrew Metal Manufactured Co., Ltd., and Shaoxing Tongzhou Metal Manufactured Co., Ltd. (''Tongzhou'') and Company X.

[4] In the *Final Determination*, the Department inadvertently stated weighted-average rather than simple-average.

STEEL WIRE GARMENT HANGERS FROM THE PRC—AMENDED DUMPING MARGINS—Continued

Exporter & producer	Weighted-average deposit rate
PRC-Wide Rate [5]	187.25

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to continue to suspend liquidation on all entries of subject merchandise from the PRC. We will also instruct CBP to require cash deposits or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as indicated in the chart above. These instructions suspending liquidation will remain in effect until further notice.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.224(e).

Dated: September 8, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–21468 Filed 9–12–08; 8:45 am]

BILLING CODE 3510–DS–P

[5] The PRC-Wide entity includes Tianjin Hongtong Metal Manufacture Co. Ltd.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–808]

Stainless Steel Plate in Coils From Belgium: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

DATES: *Effective Date*: September 15, 2008.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3797 or (202) 482–1167, respectively.

Background

On June 6, 2008, the U.S. Department of Commerce (Department) published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on stainless steel plate in coils From Belgium. *See Stainless Steel Plate in Coils from Belgium: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 32298 (June 6, 2008) (*Preliminary Results*). The current deadline for the final results of this review is October 4, 2008.

Extension of Time Limit for Final Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the final results in an administrative review within 120 days after the date on which the preliminary results were published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to up to 180 days from the date of publication of the preliminary results. *See also* 19 CFR 351.213(h)(2).

The Department finds that it is not practicable to complete the review within the original time frame due to the further analysis required in this case. As referenced in the *Preliminary Results*, the Department recently requested public comment regarding the impact of cost changes on the cost averaging period.[1] In response to this request, the Department received a number of comments from parties regarding the use of shorter cost averaging periods. The Department will need additional time to analyze the complex issues raised in these comments. Furthermore, the Department needs additional time to analyze respondent, Ugine and ALZ Belgium's cost of production supplemental questionnaire response, which was received after the Department's issuance of the *Preliminary Results*. Consequently, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department is extending the time limit for the completion of the final results of the review by an additional 60 days. Therefore, the final results of review are now due no later than December 3, 2008.

This extension notice is issued and published in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: September 9, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–21472 Filed 9–12–08; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping Methodologies for Proceedings That Involve Significant Cost Changes Throughout the Period of Investigation (POI)/Period of Review (POR) That May Require Using Shorter Cost Averaging Periods; Request for Comment*, 73 FR 26364 (May 9, 2008).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Certain Polyester Staple Fiber From the Republic of Korea: Notice of Extension of Time Limit for the Final Results of the 2006–2007 Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 15, 2008.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister or Brandon Farlander, 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) 482–1174 and (202) 482–0182, respectively.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''Department'') to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On May 30, 2008, the Department published the preliminary results of the 2006–2007 administrative review of the antidumping duty order on certain polyester staple fiber from the Republic of Korea. *See Certain Polyester Staple Fiber from Korea: Preliminary Results of the 2006/2007 Antidumping Duty Administrative Review,* 73 FR 31058 (May 30, 2008). In our preliminary results, we stated that we would issue our final results for the antidumping duty administrative review no later than 120 days after the date of publication of the preliminary results (*i.e.*, September 27, 2008).

Extension of Time Limits for Final Results

The Department has determined that completion of the final results of this review within the original time period is not practicable due to the complex legal and factual issues that have arisen since the issuance of our preliminary results of review. Specifically, the Department requires additional time to review interested parties' comments on information regarding respondent's, Huvis Corporation's, affiliated parties. Thus, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of review by an additional 60 days, until November 26, 2008.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: September 8, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–21362 Filed 9–12–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Imports of Certain Apparel Articles: Interim Procedures for the Implementation of the Earned Import Allowance Program Established Under the Food, Conservation, and Energy Act of 2008

ACTION: Interim procedures, request for comments.

SUMMARY: The Department of Commerce is issuing interim procedures implementing provisions under the Food, Conservation, and Energy Act of 2008 (''the Act''), enacted in its entirety by Congress on June 18, 2008. Title XV, Subtitle D, Part I of the Act contains amendments to the special rules for apparel and other textiles from Haiti in Section 213A(b) of the Caribbean Basin Economic Recovery Act (''CBERA'') (19 U.S.C. 2703a(b)), including rules enacted in 2006 by the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 (''HOPE''). These amendments are also cited as the ''Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008'' (''HOPE II''). Under Section 15402 of the Act, Section 213A(b) of CBERA is amended by creating a benefit for apparel wholly assembled or knit-to-shape in Haiti that meets a ''3 for 1'' earned import allowance. The amendment requires the Secretary of Commerce to establish a program to provide earned import allowance certificates to any producer or entity controlling production of apparel in Haiti, such that apparel wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns, regardless of their source, and imported directly from Haiti or the Dominican Republic may enter the United States duty-free, pursuant to the satisfaction of the terms governing issuance of the earned import allowance certificate by the producer or entity controlling production of apparel in Haiti.

DATES: These interim procedures are effective as of September 30, 2008. Although these procedures are not subject to the requirement to provide prior notice and opportunity for public comment under 5 U.S.C. 553(b)(A) (''Administrative Procedures Act''), Commerce will consider written comments received by 5 p.m. on November 14, 2008.

ADDRESSES: Comments should be addressed to: R. Matthew Priest, Deputy Assistant Secretary for Textiles and Apparel, Room 3001, United States Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3651.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce is issuing interim procedures implementing Section 15402 of the Act, which was enacted in its entirety by Congress on June 18, 2008. Title XV, Subtitle D, Part I of the Act contains amendments to the special rules for apparel and other textiles from Haiti in Section 213A(b) of CBERA (19 U.S.C. 2703a(b)), including rules enacted in 2006 by HOPE. These amendments are also cited as HOPE II.

Under Section 15402 of the Act, Section 213A(b) of CBERA is amended by creating an uncapped benefit for apparel wholly assembled or knit-to-shape in Haiti that meets a ''3 for 1'' earned import allowance. The Act requires that the Secretary of Commerce establish an Earned Import Allowance program under Section 213A(b) such that apparel wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns and imported directly from Haiti or the Dominican Republic shall enter the United States free of duty, without regard to the source of the fabrics, fabric components, components knit-to-shape or yarns from which the articles are made, if such apparel articles are accompanied by an earned import allowance certificate (''certificate'') that reflects the amount of credits equal to the total square meter equivalent (''SME'') of such apparel articles, in accordance with the program outlined below. The Secretary of Commerce has delegated his authority under the Act to implement and administer the Earned Import Allowance program to the International Trade Administration's Office of Textiles and Apparel (''OTEXA'').

This notice sets forth the interim procedures OTEXA will follow in implementing the provisions of HOPE II and the Earned Import Allowance program. In accordance with these procedures, OTEXA will issue certificates to qualifying apparel producers to accompany imports of apparel wholly formed or knit-to-shape in Haiti and exported from Haiti or the Dominican Republic. Such certificates will be issued as long as there is sufficient balance of SMEs available as a result of the purchase of qualifying woven fabrics or qualifying knit fabrics, as defined below, intended for production in Haiti. OTEXA, promptly upon promulgation of these interim procedures, intends to begin the process of opening and administering qualifying apparel producers' accounts to issue certificates as appropriate.

These procedures may be modified in the future to address concerns that may arise as OTEXA gains experience in implementing them. Pursuant to the Secretary's delegation of authority, OTEXA may reconsider, and/or subsequently amend, any determination to deposit credits or request to issue certificates that may have been procured by error, fraud, or similar faults.

Interim Procedures

1. *Introduction:* OTEXA will issue a certificate to any producer or entity controlling production in Haiti (''qualifying apparel producer'') based on the following elements: (1) One SME credit shall be issued to a qualifying apparel producer for every three SMEs of qualifying woven fabric or qualifying knit fabric that the qualifying apparel producer can demonstrate that it purchased for the manufacture in Haiti of apparel wholly assembled or knit-to-shape in Haiti. SME quantities are to be calculated by the use of the appropriate conversion factor, defined below. OTEXA shall, as requested by a qualifying apparel producer, create and maintain an account for such qualifying apparel producer, into which such credits shall be deposited. (2) Such qualifying apparel producer may redeem credits for certificates reflecting such number of credits as the qualifying apparel producer may request and has available. Requests for deposits of credits for purchases of qualifying woven fabrics and qualifying knit fabrics as well as redemption of said credits for earned import allowance certificates will be made through a dedicated on-line system, known as the Haiti HOPE II Earned Import Allowance Online System (''HOPE II online system'').

2. *Definitions:*

a. The Act: The Food, Conservation, and Energy Act of 2008.

b. Conversion Factor: Conversion factors listed in ''Correlation: U.S. Textile and Apparel Industry Category System with the Harmonized Tariff Schedule of the United States of America, 2008,'' or its successor publications, of the United States Department of Commerce.

c. Imported Directly from Haiti or the Dominican Republic: Articles are ''imported directly from Haiti or the Dominican Republic'' if—

(1) the articles are shipped directly from Haiti or the Dominican Republic into the United States without passing into the territory of any intermediate country; or

(2) the articles are shipped from Haiti or the Dominican Republic into the United States through the territory of an intermediate country, and—

(A) the articles in the shipment do not enter into the commerce of any intermediate country, and the invoices, bills of lading, and other shipping documents specify the United States as the final destination; or

(B) the invoices and other documents do not specify the United States as the final destination, but the articles in the shipment—

(i) Remain under the control of the customs authority in the intermediate country;

(ii) do not enter into the commerce of the intermediate country except for the purpose of a sale other than at retail; and

(iii) have not been subjected to operations in the intermediate country other than loading, unloading, or other activities necessary to preserve the articles in good condition.

d. Knit-to-Shape: A good is ''knit-to-shape'' if 50 percent or more of the exterior surface area of the good is formed by major parts that have been knitted or crocheted directly to the shape used in the good, with no consideration being given to patch pockets, appliqués, or the like. Minor cutting, trimming, or sewing of those major parts shall not affect the determination of whether a good is ''knit-to-shape.''

e. Qualifying Apparel Producer: An individual, corporation, partnership, association, or other entity or group that exercises direct, daily operational control over the apparel production process in Haiti; or an individual, corporation, partnership, association or other entity that is not a producer and that controls the apparel production process in Haiti through a contractual relationship or other indirect means.

f. Qualifying Knit Fabric: For the purposes of these procedures, the term ''qualifying knit fabric'' means fabric or knit-to-shape components wholly formed or knit-to-shape in any country or any combination of countries described in Section 213A(1)(B)(iii) of CBERA, as amended by the Act, from yarns wholly formed in the United States, purchased on or after October 1, 2008, expressly for production of apparel in Haiti, except that:

(1) Fabric or knit-to-shape components otherwise eligible as qualifying knit fabric shall not be ineligible as qualifying knit fabric because the fabric or knit-to-shape components contain nylon filament yarn to which Section 213(b)(2)(A)(vii)(IV) of CBERA applies;

(2) fabric or knit-to-shape components that would otherwise be ineligible as qualifying knit fabric because the fabric or knit-to-shape component contains yarns not wholly formed in the United States shall not be ineligible as qualifying knit fabric if the total weight of all such yarns is not more than 10 percent of the total weight of the fabric or knit-to-shape component; and

(3) fabric or knit-to-shape components otherwise eligible as qualifying knit fabric shall not be ineligible as qualifying knit fabric because the fabric or knit-to-shape components contain yarns covered by the short supply provisions of Section 213A(b)(5) of CBERA, as amended by the Act.

g. Qualifying Woven Fabric: For the purposes of these procedures, the term ''qualifying woven fabric'' means fabric wholly formed in the United States from yarns wholly formed in the United States, purchased on or after October 1, 2008, expressly for production of apparel in Haiti, except that:

(1) Fabric otherwise eligible as qualifying woven fabric shall not be ineligible as qualifying woven fabric because the fabric contains nylon filament yarn to which Section 213(b)(2)(A)(vii)(IV) of CBERA applies;

(2) fabric that would otherwise be ineligible as qualifying woven fabric because the fabric contains yarns not wholly formed in the United States shall not be ineligible as qualifying woven fabric if the total weight of all such yarns is not more than 10 percent of the total weight of the fabric; and

(3) fabric otherwise eligible as qualifying woven fabric shall not be ineligible as qualifying fabric because the fabric contains yarns covered by the short supply provisions of Section 213A(b)(5) of CBERA, as amended by the Act.

h. Wholly Assembled: A good is ''wholly assembled'' in Haiti if all its components, of which there must be at least two, pre-existed in essentially the same condition as found in the finished good and were combined to form the finished good in Haiti. Minor attachments and minor embellishments (for example, appliqués, beads, spangles, embroidery, and buttons) not appreciably affecting the identity of the good, and minor subassemblies (for example, collars, cuffs, plackets, and pockets), shall not affect the determination of whether a good is ''wholly assembled'' in Haiti.

3. *Submitting a Request to Open an Account:* A qualifying apparel producer, as defined in section 2(e) of these procedures, may request that OTEXA open an account to which records of purchases of qualifying woven fabric or qualifying knit fabric, as defined in sections 2(g) and 2(f) of these procedures, may be deposited toward a balance from which to draw certificates. Such request should be made online, via the HOPE II online system, located on the OTEXA Web site. In making a request to open an account, the qualifying apparel producer must provide:

a. The full name and address of the qualifying apparel producer;

b. All designated contacts and contact information, and any designees

authorized to have access to the account; and

c. A statement affirming the accuracy and authenticity of the information submitted to OTEXA.

Once the application has been received by the HOPE II online system and reviewed and approved by OTEXA, the qualifying apparel producer will be assigned a unique user identification number, and a password to enable future access to its online account. The qualifying apparel producer may request to update contact and designee information in its account at any time through the HOPE II online system.

4. *Submitting a Request to Deposit Credits.* A qualifying apparel producer with an existing account may submit a request to deposit credits for purchases of qualifying woven fabric or qualifying knit fabric. The request must contain the following information:

a. The name of the qualifying apparel producer;

b. A complete description of the qualifying woven fabric or qualifying knit fabric;

c. The quantity, in SMEs, of the qualifying woven fabric or qualifying knit fabric;

d. A statement that the qualifying woven fabric or qualifying knit fabric is intended for the production of apparel in Haiti; and

e. Supporting documentation: Documentation, which, in their totality includes:

(1) The U.S. manufacturer of the qualifying woven fabric or qualifying knit fabric;

(2) the full description of the fabric in question, including any non-U.S. components or inputs and their manufacturer;

(3) if the fabric consists wholly or in part of knit-to-shape components, the manufacturer of said components, and documentation indicating that U.S. yarns were used in the production of said components;

(3) the name of the qualifying apparel producer as the ultimate consignee; and

(4) that the fabric purchased is intended for production of apparel in Haiti.

f. An affirmation from the qualifying apparel producer as to the accuracy and authenticity of the information provided.

The request must be submitted via the Hope II online system. All supporting documentation must be submitted either electronically via the Hope II online system, or via fax to 202–482–0858 or 202–482–2331. OTEXA will review the request and supporting documentation and shall make a determination whether to approve or deny the request to deposit credits. Should there be insufficient information with which to make a determination, OTEXA may request additional information from the qualifying apparel producer, the manufacturer of the fabric or components at issue, or any other entity identified in supporting documentation, as provided by section 6.

5. *Submitting a Request for an Earned Income Allowance Certificate.* A qualifying apparel producer may request the issuance of a certificate via the HOPE II online system. The qualifying apparel producer must log on to the HOPE II online system to access its account, and submit a request to redeem credits and be issued a certificate. As long as there are sufficient credits available, a certificate will be automatically generated by the HOPE II online system, and the credits will be automatically withdrawn from the qualifying apparel producer's account. If there are insufficient credits in the qualifying apparel producer's account, the request for a certificate will automatically be denied by the HOPE II online system.

6. *Verification of Submitted Information.* OTEXA may, at any time, verify the information submitted by a qualifying apparel producer or its designee. OTEXA may require any textile mill or other entity located in the United States that exports to Haiti qualifying woven fabric or qualifying knit fabric to submit, upon such export or upon request, documentation to OTEXA: (a) verifying that the qualifying woven fabric or qualifying knit fabric was exported to a producer in Haiti or to an entity controlling production; and (b) identifying such producer or entity controlling production, and the quantity and description of qualifying woven fabric or qualifying knit fabric exported to such producer or entity controlling production. OTEXA may also require that a producer or entity controlling production submit documentation to verify purchases of qualifying woven fabric or qualifying knit fabric. OTEXA may make available to each person or entity identified in documentation submitted under these provisions information contained in the documentation that relates to the purchase of qualifying woven fabric or qualifying knit fabric involving such person or entity. OTEXA may establish and impose penalties for the submission to OTEXA of fraudulent information under this program, other than a claim under the customs laws of the United States or under title 18, United States Code.

7. *Contact Information:* Questions regarding the Earned Import Allowance program or the HOPE II online system may contact OTEXA via e-mail at *OTEXA_HaitiHOPE2@mail.doc.gov*, or by phone to the Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E8–21481 Filed 9–12–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (the Department) is rescinding in part the administrative review of the antidumping duty order on brake rotors from the People's Republic of China (PRC) for the period April 1, 2007, to August 13, 2007, with respect to Dixion Brake System (Longkou) Ltd. (Dixion), Laizhou Luqi Machinery Co., Ltd. (Luqi), Laizhou Wally Automobile Co., Ltd. (Wally), Longkou Haimeng Machinery Co., Ltd. (Haimeng), and Longkou Orient Autoparts Co., Ltd. (Longkou Orient). This partial rescission is based on the withdrawal of the requests for review by the interested parties that requested the review.

EFFECTIVE DATE: September 15, 2008.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Terre Keaton Stefanova, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1766 and (202) 482–1280, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2008, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on brake rotors from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 73 FR 17317 (April 1, 2008). In response, Dixion, Haimeng, Longkou Orient, Luqi, and Wally, exporters of the subject

merchandise, each timely requested an administrative review of the antidumping duty order on brake rotors from the PRC for entries of the subject merchandise during the period April 1, 2007, through March 31, 2008. Therefore, on May 29, 2008, the Department initiated a review of Dixion, Haimeng, Longkou Orient, Luqi, and Wally. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 73 FR 31813 (June 4, 2008).

The International Trade Commission (ITC) subsequently determined, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), that revocation of the antidumping duty order on brake rotors from the PRC would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The ITC notified the Department of its decision on June 12, 2008, and published its decision on June 18, 2008. *See Brake Rotors from China: Investigation No. 731–TA–744 (Second Review)*, 73 FR 34790 (June 18, 2008), and ITC Publication 4009 Inv. No. 731–TA–744 (Second Review) (June 2008).

Based on the ITC's decision, the Department subsequently revoked the antidumping duty order on brake rotors from the PRC, effective August 14, 2007. *See Brake Rotors from the People's Republic of China: Revocation of Antidumping Duty Order Pursuant to Second Five-Year (Sunset) Review*, 73 FR 36039 (June 25, 2008) (*Revocation Notice*). As a result of the revocation of this order, effective August 14, 2007, the period of review (POR) of this segment was changed to April 1, 2007, through August 13, 2007. *See Revocation Notice*, 73 FR at 36040; and Memorandum to the File entitled ''Change in the Period of Review,'' dated June 27, 2008.

In a letter dated July 11, 2008, Dixion and Wally withdrew their requests for review and requested that the Department rescind the review with respect to them. On August 12, 2008, Longkou Orient also withdrew its request for review, as did Haimeng and Luqi on August 13, 2008.

Rescission, in Part, of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party who requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Accordingly, Dixion, Haimeng, Longkou Orient, Luqi, and Wally timely withdrew their requests for review within the 90-day period and no other party requested a review of their entries. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this administrative review with respect to these companies.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the companies for which this review has been rescinded, antidumping duties shall be assessed, if applicable, at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: September 9, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–21473 Filed 9–12–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK50

Fisheries of the South Atlantic and Gulf of Mexico; SEDAR; Public Meetings

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

ACTION: Notice of Southeastern Data, Assessment, and Review (SEDAR) Procedural Workshop on Indices Development and Selection Criteria.

SUMMARY: Measures of population abundance are critical to developing adequate and reliable quantitative stock assessments. Given the complexity of developing indices of abundance and determining which indices may be useful for use in stock assessments, a 4 day workshop will be convened to gather key members of the SEDAR assessment community to prepare a guide to index development and evaluation. Topics of discussion will include: methods for indices development, review of criteria used in determining usefulness of indices in past SEDARs, meta-analysis of indices presented in past SEDARs (examining factors such as duration, coefficients of variation, and spatial coverage), and possible criteria for indices selection. Participants will produce summaries and/or documents of various issues to be discussed prior to the workshop and participant in the development of the final report during and after the meeting.

DATES: The SEDAR Indices Procedural Workshop will take place October 14–17, 2008; SEDAR - Indices Procedural Workshop Schedule: October 14, 2008: 1 p.m. - 8 p.m.; October 15–16, 2008: 8 a.m. - 8 p.m.; October 17, 2008: 8 a.m. - 1 p.m.

ADDRESSES: The SEDAR Indices Procedural Workshop will be held at the NOAA Fisheries, Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149; telephone: (305) 361–4200.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie Neer, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR includes three workshops: (1) Data Workshop, (2) Stock Assessment Workshop and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Stock Assessment Workshop is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Consensus Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

Each SEDAR workshop panel is asked to provide research and monitoring recommendations to improve future assessments and feedback on the process to help improve SEDAR itself. Over time, certain key topics emerge that reveal a research need or procedural suggestion that is common to multiple assessments. The SEDAR Steering Committee endorses procedural workshops such as that noticed here to address those issues that affect multiple assessments and require more time and resources to resolve than are typically available during the normal assessment development process. The goal of these workshops is to develop guidelines and practices that will increase the efficiency of subsequent SEDAR assessments.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Dated: September 10, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–21469 Filed 9–12–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK51

Fisheries of the South Atlantic and Gulf of Mexico; SEDAR; Public Meetings

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

ACTION: Notice of Southeastern Data, Assessment, and Review (SEDAR) Procedural Workshop on Catchability.

SUMMARY: Due to a paucity of fishery-independent monitoring information, stock assessments of Southeastern fisheries resources conducted through SEDAR rely heavily on evaluating fishery-dependent data sources to detect population abundance signals. Recently, assessment methods were developed that allowed for relaxation of the constant catchability assumption typically used when analyzing fishery dependent catch per unit effort information. While both assessment scientists and participating constituent representatives agree it is highly unlikely that catchability has remained constant, agreeing on the specifics that allow incorporating catchability changes remains a challenge.

SEDAR will convene a workshop including representatives from Federal and state agencies, non-governmental organizations, Council technical and constituent advisors, and university researchers to evaluate catchability issues. Participants will review information addressing catchability changes, develop recommendations for incorporating catchability changes in SEDAR assessments, and recommend criteria for consideration when developing catchability profiles for individual species or fisheries. Participants will prepare a SEDAR procedures document addressing their recommendations that will be used to guide future SEDAR assessments.

DATES: The SEDAR Catchability Procedural Workshop will take place November 17–20, 2008; SEDAR Catchability Procedural Workshop Schedule: November 17, 2008: 1 p.m. - 8 p.m.; November 18–19, 2008: 8 a.m. - 8 p.m.; November 20, 2008: 8 a.m. - 4 p.m.

ADDRESSES: The SEDAR Catchability Procedural Workshop will be held at the Doubletree Atlanta Buckhead, 3342 Peachtree Road, NE, Atlanta, GA 30326; telephone: (800) 222–8733.

FOR FURTHER INFORMATION CONTACT: Julie Neer, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR includes three workshops: (1) Data Workshop, (2) Stock Assessment Workshop and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Stock Assessment Workshop is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Consensus Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data.

Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGO's); International experts; and staff of Councils, Commissions, and state and federal agencies.

Each SEDAR workshop panel is asked to provide research and monitoring recommendations to improve future assessments and feedback on the process to help improve SEDAR itself. Over time, certain key topics emerge that reveal a research need or procedural suggestion that is common to multiple assessments. The SEDAR Steering Committee endorses procedural workshops such as that noticed here to address those issues that affect multiple assessments and require more time and resources to resolve than are typically available during the normal assessment development process. The goal of these workshops is to develop guidelines and practices that will increase the efficiency of subsequent SEDAR assessments.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Dated: September 10, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–21470 Filed 9–12–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK52

Fisheries of the South Atlantic and Gulf of Mexico; SEDAR; Public Meetings

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

ACTION: Notice of Southeastern Data, Assessment, and Review (SEDAR) Procedural workshop - Caribbean Data Evaluation.

SUMMARY: The Council-Federal cooperative SEDAR process provides stock assessments for fisheries resources of the Southeast Region. Assessment priorities are typically established by management need or perceptions of management or population problems, and often do not consider data availability. As a result, despite several attempts by SEDAR, no acceptable quantitative assessments have been developed for Caribbean stocks because data to support traditional stock assessment methods simply do not exist. It is clear that alternative methods need to be developed that will allow assessing Caribbean fisheries resources in a manner that will withstand independent peer review. Identifying and evaluating available data sources across all managed species is a strong first step that is consistent with peer review and assessment report recommendations.

SEDAR will convene a workshop including representatives from Federal agencies, territorial governments, non-governmental organizations, Council technical and constituent advisors, and university researchers. Participants will catalog and evaluate basic data, address alternative assessment methods that will accommodate the available data, and recommend assessment priorities that are consistent with available data and methods.

DATES: The SEDAR Caribbean Data Evaluation Workshop will take place January 26–29, 2009; SEDAR Catchability Procedural Workshop Schedule: January 26, 2009: 1 p.m. - 8 p.m.; January 27–28, 2009: 8 a.m. - 8 p.m.; January 29, 2009: 8 a.m. - 3 p.m.

ADDRESSES: The SEDAR Caribbean Data Evaluation Workshop will be held at the Hotel El Convento, 100 Cristo Street, Old San Juan, Puerto Rico 00901; telephone: (787) 723–9036.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie Neer, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the SEDAR process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR includes three workshops: (1) Data Workshop, (2) Stock Assessment Workshop and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Stock Assessment Workshop is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Consensus Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGO's); International experts; and staff of Councils, Commissions, and state and federal agencies.

Each SEDAR workshop panel is asked to provide research and monitoring recommendations to improve future assessments and feedback on the process to help improve SEDAR itself. Over time, certain key topics emerge that reveal a research need or procedural suggestion that is common to multiple assessments. The SEDAR Steering Committee endorses procedural workshops such as that noticed here to address those issues that affect multiple assessments and require more time and resources to resolve than are typically available during the normal assessment

development process. The goal of these workshops is to develop guidelines and practices that will increase the efficiency of subsequent SEDAR assessments.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Dated: September 10, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–21471 Filed 9–12–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK47

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat/MPA/Ecosystem Committee, in October, 2008, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, October 2, 2008, at 9:30 a.m.

ADDRESSES: This meeting will be held at the Radisson Hotel, 180 Water Street, Plymouth, MA 02360; telephone: (508) 747–4900; fax: (508) 747–8937.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will continue development of analytical aspects of Phase II of the Omnibus Habitat Amendment 2. The Committee will also review preliminary vulnerability assessment for determining adverse effects on essential fish habitat caused by fishing and develop Committee recommendations for Magnuson Stevens Act required five-year update of Council research priorities. The Committee may also consider other topics at their discretion.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: September 10, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–21402 Filed 9–12–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK46

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Crab Socioeconomic Data Collection Committee will meet in Anchorage, AK.

DATES: The meeting will be held on September 30, 2008, at 6 p.m.

ADDRESSES: The meeting will be held in the Howard Rock A Ballroom, at the Sheraton,401 East 6th Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Mark Fina, North Pacific Fishery Management Council; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The committee will discuss the collection of social and economic fisheries data, and potential analytical uses of those data. These data include revenue, cost, crew, labor, and community information, which may be collected from vessels and processing plants participating in the fisheries, as well as data from other sources.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: September 10, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–21401 Filed 9–12–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK48

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: This notice advises the public that the Western Pacific Fishery Management Council (Council) will convene a meeting of its Social Science Research Planning Committee in Honolulu, HI.

DATES: The meeting will be held Monday, October 13, 2008, from 9 a.m. until 12 noon.

ADDRESSES: The meeting will be held at the Council office at 1164 Bishop Street, Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The agenda for the meeting is as follows:

1. Introductions
2. Overview of Recent and Current Research Projects
3. Summary of Traditional and Small-Scale Fisheries Issues Considered to Date
4. Discussion of Additional or Place-Specific Issues to Consider
5. Summary of Strawman Alternative
6. Discussion of Strawman and Other Potential Alternatives
7. Public Comment
8. Recommendations for Needed Social Science Research/Analysis Regarding this Issue
9. Other Business

The order in which agenda items are addressed may change. The Committee will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: September 10, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–21404 Filed 9–12–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK49

Western Pacific Regional Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Regional Fishery Management Council (Council) will convene the 99th meeting of its Scientific and Statistical Committee (SSC) in Honolulu, HI.

DATES: The meeting will be held on Wednesday, October 8, 2008 through Friday, October 10, 2008, from 8:30 a.m. to 5 p.m. See **SUPPLEMENTARY INFORMATION** for specific dates and agenda items.

ADDRESSES: The meeting will be held at the Council Office Conference Room, 1164 Bishop St., Suite 1400, Honolulu, HI; telephone: (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808)-522–8220.

SUPPLEMENTARY INFORMATION:

Wednesday, October 8, 2008; 8:30 a.m.

1. Introductions
2. Approval of Draft Agenda and Assignment of Rapporteurs
3. Status of the 98th SSC Meeting Recommendations
4. Report from the Pacific Fisheries Science Center Director
5. Program Planning
A. Annual Catch Limits
B. WPSAR Process - Review Schedule
C. Public Comment
D. Discussion and Action
6. Insular Fisheries
A. Hawaii Archipelago Bottomfish
1. Update on Main Hawaiian Islands (MHI) Management Actions
2. Bottomfish CPUE Workshop
3. Update on MHI Bottom Camera (BOTCAM) Project
4. Bottomfish Stock Assessment
5. Total Allowable Catch
B. Council Advisory Group Reports
1. Hawaii Regional Ecosystem Advisory Committee
2. American Samoa Advisory Panel
3. American Samoa Plan Team
4. Marianas Archipelago Plan Team
C. Public Comment
D. Discussion and Action

Thursday, October 9, 2008; 8:30 a.m.

7. Pelagic Fisheries
A. Longline Management
1. Hawaii Shallow-set Fishery
a. NMFS Biological Opinion
b. Draft Supplementary Environmental Impact Statement Public Comments
2. American Samoa Fishery
a. Report of Public Meetings
b. NMFS Biological Opinion
B. Non-Longline Management
1. Hawaii Offshore Handline Fishery
2. Purse-seine Fish Aggregation Device (FAD) Fishery
C. American Samoa and Hawaii Longline Quarterly Reports
D. International Fisheries/Meetings
1. Western and Central Pacific Fisheries Commission
a. Science Committee
b. U.S. Advisory Committee
c. Northern Committee
d. Technical & Compliance Committee
2. Inter American Tropical Tuna Commission
E. American Samoa Advisory Panel
F. Public Comment
G. Discussion and Action
8. Protected Species
A. Monk Seal Critical Habitat Designation Petition
B. Loggerhead Distinct Population Segment Petition Response
C. Leatherback Critical Habitat Petition
D. Update on Inter-American Convention for the Conservation of Turtles
E. Public Comment
F. Discussion and Action

Friday, October 10, 2008; 8:30 a.m.

9. Other Business
A. National SSC Workshop (November 12–14, 2008)
B. 100th SSC Meeting
10. Summary of SSC Recommendations to the Council

Special Accommodations

These meetings are physically accessible to people with disabilities.

Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: September 10, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–21438 Filed 9–12–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Membership of the National Oceanic and Atmospheric Administration Performance Review Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Membership of the NOAA Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), NOAA announces the appointment of four new members to serve with the current membership on the NOAA Performance Review Board (PRB). The NOAA PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service and Senior Professional members and making written recommendations to the appointing authority on retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and reviewing recommendations for potential Presidential Rank Award nominees. The appointment of members to the NOAA PRB will be for a period of 12 months.

DATES: *Effective Date:* The effective date of service of the four new appointees to the NOAA Performance Review Board is September 30, 2008.

FOR FURTHER INFORMATION CONTACT: Claudia McMahon, Executive Resources Program Manager, Workforce Management Office, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–6306.

SUPPLEMENTARY INFORMATION: The names and position titles of the members of the NOAA PRB are set forth below:

John E. Oliver, Jr., Deputy Assistant Administrator for Operations, National Marine Fisheries Service

Maureen E. Wylie, Chief Financial Officer

Vickie L. Nadolski, Deputy Assistant Administrator, National Weather Service

Charles S. Baker, Deputy Assistant Administrator, National Environmental Satellite, Data and Information Service

Alexander E. MacDonald, Deputy Assistant Administrator for Laboratories and Cooperative Institutes and Director, ESRL, Office of Oceanic and Atmospheric Research

Paul N. Doremus, Director, Strategic Planning, Office of Program Planning and Integration

William Corso, Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service

Timothy R.E. Keeney, Deputy Assistant Secretary

Tyra D. Smith, Director, Human Resources, Bureau of the Census, Department of Commerce

Craig N. McLean, Deputy Assistant Administrator for Programs and Administration, Office of Oceanic and Atmospheric Research

David M. Kennedy, Director for Ocean and Coastal Resource Management, National Ocean Service

Rebecca Lent, Director, International Affairs, National Marine Fisheries Service

Deidre R. Jones, Director, Systems Engineering Center, National Weather Service

Joseph F. Klimavicz, Chief Information Officer and Director for High Performance Computing and Communications

Charles A. Franklin, Director of Communications, Office of the Under Secretary

Louisa Koch, Director, Office of Education

Louis W. Uccellini, Director, National Centers for Environmental Prediction, National Weather Service

Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service

Kathleen A. Kelly, Director, Office of Satellite Operations, National Environmental Satellite, Data and Information Service

Daniel J. Basta, Director, Office of National Marine Sanctuaries, National Ocean Service

Ronald A. Glaser, Human Resources Officer, International Trade Administration, Department of Commerce

Dated: September 4, 2008.

Conrad C. Lautenbacher, Jr.,

Vice Admiral, U.S. Navy (Ret.), Under Secretary of Commerce for Oceans and Atmosphere.

[FR Doc. E8–21474 Filed 9–12–08; 8:45 am]

BILLING CODE 3510–12–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR Agreement)

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA–DR Agreement.

DATES: *Effective Date:* September 15, 2008.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain raschel knit open work crepe fabrics, as specified below, are not available in commercial quantities in a timely manner in the CAFTA–DR countries. The product will be added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3651.

FOR FURTHER INFORMATION ON-LINE: *http://web.ita.doc.gov/tacgi/CaffaReqTrack.nsf.* Reference number: 83.2008.08.08.Fabric.SoriniSametfor Hansoll.

SUPPLEMENTARY INFORMATION:

Authority: Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA–DR Act); the Statement of Administrative Action (SAA), accompanying the CAFTA–DR Act; Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

Background

The CAFTA–DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA–DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA–DR Agreement provides that this list may be modified pursuant to Article 3.25(4)–(5), when the President of the United States determines that a

fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. *See* Annex 3.25, Note; *see also* section 203(o)(4)(C) of the CAFTA–DR Act.

The CAFTA–DR Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA–DR Act for modifying the Annex 3.25 list. On March 21, 2007, CITA published final procedures it would follow in considering requests to modify the Annex 3.25 list (72 FR 13256) (''procedures'').

On August 8, 2008, the Chairman of CITA received a Request for a commercial availability determination (''Request'') under the CAFTA–DR from Sorini Samet & Associates, LLC, on behalf of Hansoll Textile Ltd., for certain raschel knit open work crepe fabrics. On August 12, 2008, in accordance with CITA's procedures, CITA notified interested parties of the Request and posted the Request on the dedicated Web site for CAFTA–DR Commercial Availability. In its notification, CITA advised that any Response with an Offer to Supply (''Response'') must be submitted by August 22, 2008, and any Rebuttal be submitted by August 28, 2008. No interested entity submitted a Response advising CITA of its objection to the Request and its ability to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA–DR Act, and CITA's procedures, as no interested entity submitted a Response objecting to the Request and demonstrating its ability to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA–DR Agreement.

The subject fabric has been added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated Web site for CAFTA–DR Commercial Availability.

Specifications: Raschel Knit Open Work Crepe

HTS: 6005.22.00; 6005.24.00
Fiber Content: 75% cotton, 22% nylon, wrapped around 3% spandex.
Yarn Size:
  Cotton:
  English: 17.2/s–18.9/2
  Metric: 28.50/2–31.5/2
  Nylon:
  English: 38–42 denier/10 filament
  Metric: 213.75–236.25 metric/10 filament
  Spandex:
  English: 199.50–220.50 denier
  Metric: 40.85–45.15 metric
Machine Gauge: 18
  Number of Bars: 18
  Weight:
  English: 0.45 to 0.50 linear yds/lb.
  Metric: 0.155–.171 kg/sq.m.
Width:
  English: Not less than 54 to 58 inches, cuttable
  Metric: 137.2 to 147.3 cm, cuttable
Finish: piece dyed or printed

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E8–21480 Filed 9–12–08; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement

AGENCY: Committee for the Implementation of Textile Agreements (''CITA'').

ACTION: Modifications to the CAFTA–DR Commercial Availability Final Procedures; Notice of Modified Procedures.

SUMMARY: This notice presents the modifications to CITA's Final Procedures under the CAFTA–DR Commercial Availability Provisions.

DATES: *Effective Date:* September 15, 2008.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 203(o)(4) of the CAFTA–DR Implementation Act; the Statement of Administrative Action (''SAA''), accompanying the CAFTA–DR, at 16–20.

Background

Annex 3.25 of the Dominican Republic-Central America-United States Free Trade Agreement (''Agreement'') provides a list of fabrics, yarns, and fibers that the Parties to the Agreement have determined are not available in commercial quantities in a timely manner from suppliers in the United States or other CAFTA–DR countries. A textile and apparel good containing fabrics, yarns, or fibers that is included in Annex 3.25 of the Agreement may be treated as if it is an originating good for purposes of the specific rules of origin in Annex 4.1 of the Agreement, regardless of the actual origin of those inputs, provided that all other fabrics, yarns, or fibers of the component that determines the classification of the good meet the specific rules of origin in Annex 4.1 of the Agreement. The CAFTA–DR Implementation Act provides that the President will establish procedures governing the submission of requests and may determine whether additional fabrics, yarns, or fibers are not available in commercial quantities in a timely manner in the United States or the other CAFTA–DR countries. In addition, the CAFTA–DR Implementation Act establishes that the President may remove a fabric, yarn, or fiber from the list, if it has been added to the list in an unrestricted quantity pursuant to section 203(o), if he determines that the fabric, yarn, or fiber has become available in commercial quantities in a timely manner.

The SAA provides that the President will delegate to CITA his authority under section 203(o)(4) of the Agreement, known as the Commercial Availability Provision, to establish procedures for modifying the list of fabrics, yarns, or fibers not available in commercial quantities in a timely manner for Agreement countries, as set out in Annex 3.25 of the Agreement.

The CAFTA–DR Commercial Availability Final Procedures (''procedures'') are not subject to the requirement to provide prior notice and opportunity for public comment, pursuant to 5 U.S.C. 553(b)(A) (Administrative Procedures Act). These procedures may be modified in the future to address concerns that may arise as CITA gains experience in implementing them. CITA possesses inherent authority to reconsider, and/or subsequently amend, commercial availability determinations that may have been procured by error, fraud, or similar faults. Should CITA undertake to review a determination under such circumstances, CITA will provide notice to the public, through the email and website notification processes described in the procedures, and provide opportunity for interested entities to submit comments and information for CITA's consideration.

CITA's Request for Public Comment on the Due Diligence Requirement Under the CAFTA–DR Commercial Availability Procedures

On December 3, 2007, CITA issued a **Federal Register** notice requesting public comment and proposals on the

operation of the due diligence requirement under CITA's procedures implementing the CAFTA–DR Commercial Availability Provision. *See Request for Public Comment on the Due Diligence Requirement Under the Commercial Availability Procedures of the Dominican Republic-Central America-United States Free Trade Agreement* (*CAFTA–DR*), 72 Fed. Reg. 67916 (December 3, 2007). In its notice, CITA explained that, based on its experience in implementing those procedures, it was concerned that due diligence efforts have fallen short of those expected when the procedures were drafted; that product descriptions may not meet recognized standards; that potential suppliers may not be adequately substantiating their claims that they are to be able to supply requested products; and that CITA is not receiving complete information from interested entities regarding meaningful contact between requesters and potential suppliers necessary for CITA to make informed determinations. CITA requested comment on several areas involved in the commercial availability process, including: communications between requesters and potential suppliers; identification of potential suppliers; content of communications between requesters and potential suppliers; substitutability of products; commercial availability of a production input vs. downstream product; and potential suppliers' responses to requester's inquiry. As a result of its review and consideration of submitted comments and proposals, CITA has modified its existing procedures.

Modified Final Procedures

1. Introduction

The intent of the procedures is to foster the use of U.S. and CAFTA–DR products by implementing procedures that allow products to be placed on or removed from a product list, on a timely basis, and in a manner that is consistent with normal business practice. To this end, these procedures are intended to facilitate the transmission, on a timely basis, of order requests and offers to supply such requests; have the market indicate the availability of the supply of products that are the subject of requests; make available promptly, to interested entities and parties, information regarding the requests for products and offers to supply received; ensure wide participation by interested entities and parties; provide careful scrutiny of information provided to substantiate order requests and response to supply offers; and provide timely public dissemination of information used by CITA in making commercial availability determinations.

2. Definitions

(a) *Commercial Availability Request.* A Commercial Availability Request (''Request'') is a submission from an interested entity requesting that CITA place a good on the list in Annex 3.25 because that fiber, yarn, or fabric is not available in commercial quantities in a timely manner from a supplier in the CAFTA–DR countries.

(b) *Interested Entity.* An ''interested entity'' means a government that is a Party to the Agreement, other than the United States; a potential or actual purchaser of a textile or apparel good; or a potential or actual supplier of a textile or apparel good. CITA recognizes that a legal or other representative may act on behalf of an interested entity. *See* section 203(o)(4)(B)(i) of the CAFTA–DR Implementation Act.

(c) *Interested Party.* An ''interested party'' means any interested person that requests to be included on the email notification list for commercial availability proceedings. Any interested person may become an interested party by contacting CITA through the U.S. Department of Commerce's Office of Textile and Apparel CAFTA–DR Commercial Availability *Web site* or by sending an *e-mail* to *OTEXA_CAFTA@ita.doc.gov*.

(d) *Official Receipt.* The ''official receipt'' is CITA's email confirmation that it has received both the email version and the original submission signed by the interested entity delivered via express courier.

(e) *Request.* A ''Request'' refers to the Commercial Availability Request.

(f) *Request to Remove or Restrict.* A ''Request to Remove or Restrict'' is a submission from an interested entity, made no sooner than six months after a product has been added to the Annex 3.25 list in an unrestricted quantity pursuant to Section 203(o) of the CAFTA–DR Implementation Act, requesting that CITA either remove a product or that a quantity restriction be introduced.

(g) *Requestor.* The ''requestor'' refers to the interested entity that files a Request, either a Request or a Request to Remove or Restrict, under the CAFTA–DR Commercial Availability provision, for CITA's consideration.

(h) *CAFTA–DR Supplier.* A ''CAFTA–DR supplier'' is a potential or actual supplier of a textile or apparel good in the territory of any Party.

(i) *Response with an Offer to Supply.* A ''Response with an Offer to Supply'' (''Response'') is a submission from an interested entity to CITA providing its objection to the Request and asserting its ability to supply the subject product by providing an offer to supply the subject product described in the Request.

(j) *Rebuttal Comment.* A ''Rebuttal Comment'' (''Rebuttal'') is a submission from an interested entity providing information in response to evidence or arguments raised in a Response. A Rebuttal must be limited to evidence and arguments provided in a Response.

(k) *Fiber, Yarn, or Fabric.* The term ''fiber, yarn, or fabric'' means a single product or a range of products, which meet the same specifications provided in a submission, and which may be only part of a Harmonized Tariff Schedule of the United States (''HTSUS'') provision.

(l) *U.S. Business Day.* A ''U.S. business-day'' is any calendar day other than a Saturday, Sunday, or a legal holiday. See section 203(o)(4)(B)(i) of the CAFTA–DR Implementation Act.

3. Submissions for Participation in the CAFTA–DR Commercial Availability Proceeding

(a) *Filing a Submission.* All submissions for a CAFTA–DR Commercial Availability proceeding (e.g., Request, Response, Rebuttal, and Request to Remove or Restrict) must be in English. If any attachments are in a language other than English, then a translation must be provided. Each submission must be submitted to the U.S. Department of Commerce's Office of Textiles and Apparel (''OTEXA'') in two forms: electronic mail and an original signed submission.

(1) An electronic mail (''e-mail'') version of the submission must be either in PDF, Word, or Word-Perfect format and must contain an adequate public summary of any business confidential information and the due diligence certification, sent to *OTEXA_CAFTA@ita.doc.gov*. The e-mail version of the submission will be posted for public review on OTEXA's CAFTA–DR Commercial Availability *Web site.* No business proprietary information should be submitted in the e-mail version of any document.

(2) The original signed submission must be received via express courier to—Chairman, Committee for the Implementation of Textile Agreements, Room H3100, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230. Any business confidential information upon which an interested entity wishes to rely must be included in the original signed submission only. Except for the inclusion of business confidential information, the two versions of a submission should be identical.

(3) Brackets must be placed around all business confidential information contained in submissions. Documents containing business confidential information must have a bolded heading stating ''Confidential Version.'' Attachments considered business confidential information must have a heading stating ''Business Confidential Information.'' Documents, including those submitted via ''e-mail,'' provided for public release, must have a bolded heading stating ''Public Version'' and all the business confidential information must be deleted and substituted with asterisks.

(4) Generally, details such as quantities and lead times for providing the subject product can be treated as business confidential information. However, the names of CAFTA–DR suppliers who were contacted, what was asked generally about the capability to manufacture the subject product, and the responses thereto should be included in public versions, which will be made available to the public.

(b) *Due Diligence Certification.* An interested entity must file a certification of due diligence as described in subsection (b)(1) with each submission, both e-mail and original signed versions, containing factual information. If the interested entity has legal counsel or other representative, the legal counsel or other representative must file a certification of due diligence as described in subsection (b)(2) with each submission, both e-mail and original signed versions, containing factual information. Accurate representations of material facts submitted to CITA for the CAFTA–DR Commercial Availability proceeding are vital to the integrity of this process and are necessary for CITA's effective administration of the statutory scheme. Each submission containing factual information for CITA's consideration must be accompanied by the appropriate certification regarding the accuracy of the factual information. Any submission that lacks the applicable certifications will be considered an incomplete submission that CITA will reject and return to the submitter. CITA may verify any factual information submitted by interested entities in a CAFTA–DR Commercial Availability proceeding.

(1) For the person responsible for presentation of the factual information: I, (name and title), currently employed by (interested entity), certify that (1) I have read the attached submission, and (2) the information contained in this submission is, to the best of my knowledge, complete and accurate.

(2) For the person's legal counsel or other representative: I, (name), of (law or other firm), counsel or representative to (interested entity), certify that (1) I have read the attached submission, and (2) based on the information made available to me by (person), I have no reason to believe that this submission contains any material misrepresentation or omission of fact.

(c) *Official Receipt.* A submission will be considered officially submitted to CITA only when both the e-mail version and the original signed submission have been received by CITA. For Requests, CITA will confirm to the requestor that both versions of the Request were received through an e-mail confirmation. CITA's e-mail confirmation shall be considered the ''official receipt'' of the Request, and also begins the statutory 30 U.S. business-day process for CITA consideration of Requests. CITA will confirm official receipt of any Response and Rebuttal by posting the submissions on the dedicated *Web site.*

4. Submitting a Request for Consideration in a Commercial Availability Proceeding

(a) *Commercial Availability Request.* An interested entity may submit a Request to CITA alleging that a fiber, yarn, or fabric is not available in commercial quantities in a timely manner from a producer in the CAFTA–DR countries.

(b) *Contents of a Commercial Availability Request.*

(1) *Detailed Product Information.* The Request must provide a detailed description of the subject product, including, if applicable, fiber content, construction, yarn size, and finishing processes; and the classification of the product under the HTSUS. All measurements in the entire submission must be stated in metric units. If the English count system is used in any part, then a conversion to metric units must be provided. The description must include reasonable product specifications, including, if applicable, fiber content, construction, yarn size, and finishing processes, as well as timelines and quantities. Reasonable product specifications include the use of accepted terminology and standards, such as those used by ASTM (''American Society for Testing and Materials'') or AATCC (''American Association of Textile Chemists and Colorists'').

If any aspect of the Request is outside the normal course of business (*e.g.*, tight deadline, higher standards of performance, requirements to match existing specifications), requestors must provide CAFTA–DR suppliers with detailed explanations and measurable criteria for the specification or term at issue. In the course of its review of the Request, CITA will consider record evidence to determine whether such specifications and terms are reasonable.

The requestor must clearly describe the unique characteristics of the subject product that distinguishes it from other similar or potentially substitutable products. In addition, the requestor must also explain why such characteristics are required for the purposes of the end-use of the product and cannot be substituted by another product. However, all characteristics and specifications must be supported by measurable criteria.

(2) *Quantity.* The Request must provide the specific quantity of the product needed by the requestor, in standard units of quantity for production of the subject product in the CAFTA–DR countries.

(3) *Due Diligence.* The Request must provide a complete description of the due diligence undertaken by the requestor to determine the subject product's availability in the CAFTA–DR countries. Due diligence for the requestor means it has made reasonable efforts to obtain the subject product from CAFTA–DR suppliers.

(i) *Generally:* The requestor must provide the names and addresses of suppliers contacted, who (by name and position) was specifically contacted, the exact request that was made, the dates of those contacts, whether a sample of the subject product was provided for review, and the exact response given for the supplier's inability to supply the subject product under the same conditions as contained in the Request submitted to CITA, in addition to any other information the requestor believes is relevant. The requestor must submit copies or notes of relevant correspondence, both inquiries and responses, with these suppliers. Relevant correspondence includes notes of telephone conversations.

(ii) *Identification of CAFTA–DR suppliers:* Requestors must make reasonable efforts to identify CAFTA–DR suppliers in the CAFTA–DR countries. Requestors should identify CAFTA–DR suppliers through a number of means, including the requestor's knowledge of the industry, industry directories, and industry association memberships. However, an email from a requestor with a general inquiry to all manufacturers in the CAFTA–DR countries may not constitute due diligence. Rather, reasonable efforts must be taken to identify CAFTA–DR suppliers who are generally known to produce the class or type of product at issue. Requestors must provide an

explanation in their Request as to why their efforts to identify CAFTA–DR suppliers were reasonable given the product at issue.

(iii) *Use of Third Parties and Business-to-Business Contact:* Due diligence includes substantive and direct contact, indicating a legitimate intent to do business, between requestors and CAFTA–DR suppliers. Third party communications are no substitutes for meaningful dialogue between appropriate officials. Once interest is expressed between requestors and CAFTA–DR suppliers, subsequent communications should be conducted by appropriate officials of the requestor and CAFTA–DR supplier based on normal business practice. A lack of appropriate business-to-business contact may be deemed as insufficient due diligence.

(iv) *Description of the Subject Product:* In undertaking due diligence, requestors must provide a detailed description of the product to CAFTA–DR suppliers. The description must include reasonable product specifications, including, if applicable, fiber content, construction, yarn size, and finishing processes, as well as timelines and quantities. Reasonable product specifications include the use of accepted terminology and standards, such as those used by ASTM or AATCC. If any aspect of the Request is outside the normal course of business (e.g., tight deadline, higher standards of performance, requirements to match existing specifications), requestors must provide CAFTA–DR suppliers with detailed explanations and measurable criteria for the specification or term at issue that would render such aspects as reasonable for the product in question. CITA will consider record evidence to determine whether such specifications and terms are reasonable.

(v) *Provision of Samples:* In undertaking its due diligence, a requestor must clearly communicate to CAFTA–DR suppliers its standard business practice with respect to the provision of samples. While requestors may request a sample, a CAFTA–DR supplier is not required to provide a sample under CITA's procedures. However, CITA notes that CAFTA–DR suppliers must meet certain requirements with respect to the provision of samples and/or information demonstrating their ability to supply the subject product in commercial quantities in a timely manner. *See* Section 6(b)(3) and Section 6(b)(4).

(vi) *Substitutability of Products:* In undertaking its due diligence, a requestor must clearly communicate information regarding the substitutability of the product in question to CAFTA–DR suppliers. In its inquiries to CAFTA–DR suppliers, the requestor must clearly describe the unique characteristics of the subject product that distinguishes it from other similar or potentially substitutable products. In addition, the requestor must provide CAFTA–DR suppliers with information why such characteristics are required for the purposes of the end-use of the product and cannot be substituted by another product. However, all characteristics and specifications must be supported by measurable criteria. If, in the course of due diligence, a CAFTA–DR supplier proposes a substitutable product, the requestor must provide reasonable justifications to the CAFTA–DR supplier for rejecting potentially substitutable products.

(vii) *Treatment of Business Confidential Information:* Specific details of correspondence with suppliers, such as quantities and lead times for providing the subject product, can be treated as business confidential information. However, the names of CAFTA–DR suppliers who were contacted, what was asked generally about the capability to manufacture the subject product, and the responses thereto should be available for public review to ensure proper public participation in the process. ''Lead times'' refers to supplying the subject product within normal business time frames for the subject product once an order is received. Specific delivery dates are not necessary. Required delivery dates that fall within the time needed to complete the Commercial Availability determination process are not acceptable.

(4) *Substitutable Products.* The Request must provide information on whether the requestor believes that other products supplied by the CAFTA–DR supplier are not substitutable in commercial quantities in a timely manner for the product(s) that is (are) the subject of the Request for purposes of the intended use. Clearly describe the unique characteristics of the subject product that distinguishes it from other similar or potentially substitutable products. Describe why such characteristics are required for the purposes of the end-use of the product and cannot be substituted by another product available from a CAFTA–DR supplier.

(5) *Additional Information.* The Request may provide any additional evidence or information believed to be relevant for CITA to determine whether a fiber, yarn, or fabric is not available in commercial quantities in a timely manner from a producer in the CAFTA–DR countries.

5. Consideration and Acceptance of a Request

In considering whether to accept a Request, CITA will consider and determine whether it provides all the required information specified in sections 3 and 4 of these procedures. CITA will determine whether to accept the Request for consideration and investigation not later than two U.S. business days after the official receipt of a Request.

(a) *Request Rejected.* If CITA determines that the Request does not contain the required information, the requestor will be notified promptly by email that the Request has not been accepted and the reasons for the rejection. A Request may be resubmitted with additional information for the subject product and CITA will reevaluate it as a new Request.

(1) *Requests for Downstream Products with Inputs Not Commercially Available.* If, in its initial review of a Request, CITA determines that a subject product would be commercially available but for the commercial unavailability of a certain input of the subject product, CITA will reject the Request. The requestor may submit a Request for the input in question rather than the downstream product.

(2) *Requests for Products with Prohibited Inputs, Specifications, and/or Processes.* If, in its initial review of a Request, CITA determines that the subject product requires inputs, specifications, and/or processes that are prohibited under the laws and regulations of the United States, CITA will reject the Request if there is a substitute product that does not require such prohibited inputs, specifications, or processes.

(b) *Request Accepted.* If CITA determines that the Request contains the required information, CITA will notify interested parties by e-mail that a Request has been accepted and filed and will assign a File Number. CITA will post the accepted Request on its website for public notice. The email notification and the website posting will indicate the calendar date deadlines for submitting Responses and Rebuttals.

6. Submitting a Response With an Offer To Supply

Respondents must meet the requirements outlined in Section 3 of these procedures. General comments in support of or opposition to a Request do not meet the requirements of a Response. A Due Diligence Certification must accompany a Response.

(a) *Response With an Offer to Supply Submission.* An interested entity (a CAFTA–DR supplier) may file a submission to a Request CITA accepted advising CITA of its objection to the Request and its ability to supply the subject product by providing an offer to supply the subject product as described in the Request. An interested entity will have 10 U.S. business days after official receipt of a Request to respond to a Request. If good cause is shown, CITA may extend this deadline, but CITA will still meet the statutory deadline for making a determination.

(b) *Contents of a Response With an Offer to Supply.*

(1) *File Number.* The Response must reference the CITA File Number assigned to the particular Request being addressed.

(2) *Quantity.* The Response must supply the quantity of the subject product that the respondent is capable of currently supplying, in standard units of quantity. All measurements must be in metric units. If the English count system is used in any part, then a conversion to metric units must be provided.

(3) *Production Capability/ Demonstration of Ability to Supply.* A Response must contain information supporting the claim to supply the subject product, or one substitutable, in commercial quantities in a timely manner.

(i) The Response must report the quantity, in metric units, that the CAFTA–DR supplier produced of the subject product, or a substitutable product, in the preceding 24-month period.

(ii) For products that have experienced cyclical demand or are not currently produced, the CAFTA–DR supplier must indicate the quantity that has been supplied or offered commercially in the past, with an explanation of the reasons it is not currently produced or offered.

(iii) If the subject product involves a new style, weight, or other variation that is new to the market or new to the CAFTA–DR supplier, then the supplier must provide detailed information on its current ability to make the subject product in commercial quantities in a timely manner. Such information could include current production capacity, current loom availability, and standard timetables to produce.

(iv) A CAFTA–DR supplier may support its claim to be able to produce the subject product through provision of a sample meeting exactly the specifications as presented in the Request. However, the provision of a sample is not required. Regardless of whether a sample is provided, a respondent must demonstrate its ability to produce the subject product by providing sufficient relevant information regarding their production capability. Such information could include past production of similar products and/or descriptions of equipment and identification of suppliers necessary to produce the subject product. If some operations, such as finishing, will be completed by other entities, the name of the facility and contact information must be provided.

(v) The Response may provide, if relevant, the basis for the CAFTA–DR supplier's rationale that other products that are supplied by the CAFTA–DR supplier in commercial quantities in a timely manner are substitutable for the subject product(s) for purposes of the intended use, supported by measurable criteria.

(vi) In its review of a Response, CITA will consider whether the CAFTA–DR supplier was responsive to the efforts employed by the requestor to obtain the subject product in the course of due diligence. In the event that a CAFTA–DR supplier was not responsive, a CAFTA–DR supplier must provide a reasonable explanation in its Response as to why it did not respond to earlier inquiries by the requestor in the course of due diligence. CITA will reject a Response if it does not include such explanation.

(4) *Due Diligence.* The Response must provide a complete description of the due diligence undertaken by the CAFTA–DR supplier to substantiate the ability to supply the subject product. If a CAFTA–DR supplier has participated in the requestor's undertaking of due diligence, the supplier must provide certain information in response to the requestor's inquiries.

(i) If a CAFTA–DR supplier has been responsive to a requestor in the undertaking of due diligence, the CAFTA–DR supplier must have stated its ability to supply or not supply the subject product. If the product can be supplied, the response to the inquiry must contain information supporting the CAFTA–DR supplier's claim to supply the subject product, or one substitutable, in commercial quantities in a timely manner.

(ii) If a CAFTA–DR supplier offers to supply the subject product, the supplier may support its offer by reporting the quantity, in metric units, that it has produced of the subject product, or a substitutable product, in the preceding 24-month period. If the CAFTA–DR supplier does not provide such information, it must, subject to section 6(b)(4)(vii), explain why the information it has provided sufficiently supports its offer to supply.

(iii) In response to a requestor's inquiry, for products that have experienced cyclical demand or are not currently produced, the CAFTA–DR supplier must provide the requestor the quantity that has been supplied or offered commercially in the past, with an explanation of the reasons it is not currently produced or offered.

(iv) If the subject product involves a new style, weight, or other variation that is new to the market or new to the CAFTA–DR supplier, then the supplier must provide detailed information on its current ability to make the subject product in commercial quantities in a timely manner. Such information could include current production capacity, current loom availability, and standard timetables to produce the subject product.

(v) A CAFTA–DR supplier may support its claim to be able to produce the subject product through provision of a sample meeting the specifications as presented in an inquiry. However, the provision of a sample is not required. Regardless of whether a sample is provided, the CAFTA–DR supplier must demonstrate its ability to produce the subject product by providing sufficient relevant information regarding their production capability. Such information could include past production of similar products and/or descriptions of equipment and identification of suppliers necessary to produce the subject product. If some operations, such as finishing, will be completed by other entities, the name of the facility and contact information must be provided.

(vi) A response to a requestor's inquiry must provide, as applicable, the basis for the CAFTA–DR supplier's rationale that other products that are supplied by the CAFTA–DR supplier in commercial quantities in a timely manner are substitutable for the subject product for purposes of the intended use, supported by measurable criteria.

(vii) Nothing in these procedures shall require any CAFTA–DR supplier to provide business confidential or other commercially sensitive information to a requestor. However, a CAFTA–DR supplier must provide the requestor a reasonable explanation why such information was not provided and why the information it has provided sufficiently supports its offer to supply.

(5) *Location of the CAFTA–DR supplier.* The Response must provide the name, address, phone number, and e-mail address of a contact person at the

facility claimed to be able to supply the subject product.

7. Submitting a Rebuttal Comment

A Rebuttal must meet the requirements outlined in Section 3 of these procedures. General comments in support of or opposition to a Request or a Response do not meet the requirements of a Rebuttal. A Due Diligence Certification must accompany a Rebuttal.

(a) *Rebuttal Comment.* Any interested entity may submit a Rebuttal to a Response. An interested entity must submit its Rebuttal not later than 4 U.S. business days after the deadline for Response. If good cause is shown, CITA may extend the time limit, but CITA will still meet the statutory deadline for making a determination.

(b) *Contents of a Rebuttal.* The Rebuttal Comment may respond only to evidence or arguments raised in the Response and must identify the Response, evidence and/or arguments to which it is responding. The Rebuttal must reference the CITA File Number assigned to the particular Request being addressed.

8. Determination Process

(a) Not later than 30 U.S. business days after official receipt of a Request (or not later than 44 U.S. business days where an extension is provided), CITA will notify interested entities by e-mail and interested parties and the public by a posting on its Web site whether the subject product is available in commercial quantities in a timely manner in the CAFTA–DR countries and whether an interested entity has objected to the Request.

(b) CITA will notify the public of the determination by publication in the **Federal Register** when the determination results in a change to the Commercial Availability List in Annex 3.25 of the Agreement.

(c) *Types of Determinations.*

(1) *Denial.* A denial means that CITA has determined that the subject product is available in commercial quantities in a timely manner in the CAFTA–DR countries. If a Request is denied, notice of the denial will be posted on the CAFTA–DR Commercial Availability *Web site*.

(i) *Denial of Requests for Downstream Products with Inputs Not Commercially Available:* If, during the course of its review of a Request, CITA determines that the subject product is commercially available but for the commercial unavailability of a certain input of the subject product, CITA will deny the Request. The requestor may submit a Request for the input in question rather than the downstream product.

(3) *Denial of Requests for Products with Prohibited Inputs, Specifications, and/or Processes:* If, during the course of its review of a Request, CITA determines that the subject product requires inputs, specifications, and/or processes that are prohibited under the laws and regulations of the United States, CITA will deny the Request if there is a substitute product that does not require such prohibited inputs, specifications, or processes.

(2) *Approval in Unrestricted Quantity.* An approval in unrestricted quantities means that CITA has determined that the subject product is not available in commercial quantities in a timely manner in the CAFTA–DR countries or that no interested entity has objected to the Request.

If a Request is approved without restriction, a notice will be published in the U.S. **Federal Register** not later than 30 U.S. business days (or not more than 44 U.S. business days where an extension is provided) after the official receipt of a Request, adding the subject product to the Commercial Availability List in Annex 3.25 of the Agreement. The effective date of the determination is the date of publication of the notice in the U.S. **Federal Register**.

(3) *Approval in a Restricted Quantity.*

(i) *Approval in a Restricted Quantity:* An Approval in a Restricted Quantity means that CITA has determined to add the subject product to the Commercial Availability List in Annex 3.25 of the Agreement with a specified restricted quantity. CITA may approve the Request in a restricted quantity if CITA determines that a CAFTA–DR supplier(s) can partially fulfill the Request for the subject product. The restricted quantity specifies the amount of the subject product that can be provided by a CAFTA–DR supplier(s).

(A) If a Request is approved in a restricted quantity, a notice will be published in the **Federal Register** not later than 30 U.S. business days (or not more the 44 U.S. business days where an extension is provided) after official receipt of the Request, adding the subject product to the Commercial Availability List in Annex 3.25 of the Agreement with a specified restricted quantity. The restricted quantity specifies the amount of the subject product that can be provided by a CAFTA–DR supplier(s).

(B) The effective date of the determination will be the date of publication in the U.S. **Federal Register**.

(ii) *Elimination of a restricted quantity:* Not later than six months after adding a product to the Commercial Availability List in Annex 3.25 of the Agreement in a restricted quantity, CITA may eliminate the restriction if it determines that the subject product is not available in commercial quantities in a timely manner in the CAFTA–DR countries.

(A) The determination that the subject product is not available in commercial quantities in a timely manner will be based upon whether the restricted quantity has been provided by a CAFTA–DR supplier(s). CITA will solicit comments and information from the CAFTA–DR supplier(s) and the requestor.

(B) If the CAFTA–DR supplier(s) are still capable of providing the restricted quantity, the restriction will remain.

(C) If the CAFTA–DR supplier(s) are unable to provide the restricted quantity, CITA will eliminate the restricted quantity. CITA will publish a notice in the U.S. **Federal Register**, and post on the Web site, that the restricted quantity is eliminated and the subject product is added to the Commercial Availability List in Annex 3.25 in an unrestricted quantity. The effective date of the determination will be the date of publication in the U.S. **Federal Register**.

(4) *Insufficient Information to Determine.* CITA will extend its time period for consideration of the Request by an additional 14 U.S. business days in the event that CITA determines, not later than 30 U.S. business days after official receipt of a Request, that it has insufficient information to make a determination regarding the ability of a CAFTA–DR supplier to supply the subject products of the Request based on the submitted information. CITA will normally determine that it does not have sufficient information to make a determination on a Request when CITA finds there is inconsistency in material information contained in the Request, one or more Responses, and/or the Rebuttal(s). CITA will notify interested parties via e-mail that it has extended the time period for CITA's consideration by 14 U.S. business-days. CITA also will announce the extension on the Web site.

(i) *Process during Extension Period:* During the extended time period, CITA will request that interested entities provide additional evidence to substantiate the information provided, and may initiate a meeting with interested entities. Should CITA elect to conduct a meeting, it will comply with requirements to conduct proceedings in an open manner. Such evidence may include *inter alia* product samples, lab tests, detailed descriptions of product facilities, and comparisons of product performance in the intended end-use of the subject product. Any samples, if

requested, of fibers, yarns, or fabrics, that are provided to CITA will be made available for public inspection at the Office of Textiles and Apparel, Room 3110, U.S. Department of Commerce, 14th St. and Constitution Ave., NW., Washington, DC 20230. All written submissions must follow instructions described in Section 3 of these procedures. Samples should be identified with a cover sheet that describes the specifications of the sample and be identical to the specifications of the Request.

(ii) CITA also will consider evidence in support of claims that CAFTA–DR supplier(s) can supply a substantially similar product to that specified in the Request.

(ii) CITA will make a determination, not later than 44 U.S. business days after the official receipt of a Request whether to approve, approve with restriction, or deny the Request and will follow the notification process accordingly.

(5) *Deemed Approval.* In the event that CITA does not make a determination in response to a Request to add a product to Annex 3.25 of the Agreement within the statutory deadlines provided, not later than 45 U.S. business-days after the official receipt of the Request or not later than 60 U.S. business-days after the official receipt of the Request that was determined to lack sufficient information pursuant to subsection (c)(4), the requested subject product shall be added to the Commercial Availability List in Annex 3.25, in an unrestricted quantity, in accordance with the requirements of section 203(o)(4)(D) of the CAFTA–DR Implementation Act. CITA will notify the public of the deemed approval by publication in the U.S. **Federal Register** and posting on OTEXA's Web site.

9. Six Month Procedures

(a) *Request to Remove or Restrict.* No earlier than six months after a product has been added to the Commercial Availability List in Annex 3.25 in an unrestricted quantity pursuant to Sections 203(o)(2) and (4) of the CAFTA–DR Implementation Act, an interested entity may submit a request to CITA requesting that a product be either removed or that a quantity restriction be introduced.

(b) *Content of a Request to Remove or Restrict.* The Request to Remove or Restrict must provide the substantive information set forth in subsection 6(b) (Contents of a Response with an Offer to Supply) of these procedures.

(c) *Procedures.*

(1) In considering whether to accept a Request to Remove or Restrict, CITA will follow procedures set forth in Section 5 (Consideration and Acceptance of a Request) of these procedures.

(2) If CITA determines to accept the Request to Remove or Restrict, CITA and any responding interested entity shall follow applicable procedures and contents set forth in subsection 6(a) (Response with an Offer to Supply) and Section 7 (Submitting a Rebuttal Comment) of these procedures.

(3) As set forth in subsections 8(a) and (b) (Determination Process) of these procedures, CITA will determine whether the subject product of the Request to Remove or Restrict is available in commercial quantities in a timely manner in the CAFTA–DR countries not later than 30 U.S. business days after the official receipt of the Request to Remove or Restrict.

(i) If CITA determines that the product is available in commercial quantities in a timely manner in the CAFTA–DR countries, e.g., that a CAFTA–DR supplier is capable to supply the entire subject product requested originally, then that product will be removed from the Commercial Availability List in Annex 3.25 of the Agreement.

(ii) If CITA determines that the product is available in restricted quantities in a timely manner in the CAFTA–DR countries, e.g., that a CAFTA–DR supplier is capable to supply part of the subject product requested originally then a restricted quantity will be introduced for that product.

(iii) If the Commercial Availability List changes as a result of CITA's determination for the Request to Remove or Restrict, CITA will notify interested parties by e-mail of its determination and will publish a notice of its determination for the Request to Remove or Restrict in the U.S. **Federal Register**.

(A) For removal, the notice of determination will state that textile and apparel articles containing the subject product are not to be treated as originating in a CAFTA–DR country if the subject product is obtained from non-CAFTA–DR sources, effective for goods entered into the United States on or after six months (i.e., 180 calendar days) after the date of publication of the notice.

(B) For restriction, the notice of determination will specify the restricted quantity for the subject product that is to be effective on or after six months (i.e., 180 calendar days) after the publication date of the notice.

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E8–21478 Filed 9–12–08; 8:45 am]

BILLING CODE 3510–DS–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Notice

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Tuesday, September 16, 2008, 4 p.m.–5:30 p.m.

PLACE: Corporation for National and Community Service; 8th Floor; 1201 New York Avenue, NW., Washington, DC 20525.

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Chair's Opening Comments and Swearing in of New Members.

II. Consideration of Prior Meeting's Minutes.

III. CEO Report.

IV. Committee Reports: Management and Governance Committee Report and Consideration of Revisions to the Corporation's Strategic Plan Targets; Program and Evaluation Committee Report; and Strategic Partnerships Committee Report.

V. Honoring Departing Board Members.

VI. Public Comment.

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person by 5 p.m. Monday, September 15, 2008.

CONTACT PERSON FOR MORE INFORMATION: Lisa Guccione, Senior Policy Advisor, Office of the CEO, Corporation for National and Community Service, 10th Floor, Room 10207, 1201 New York Avenue, NW., Washington, DC 20525. Phone (202) 606–6637. Fax (202) 606–3460. TDD: (202) 606–3472. E-mail: *lguccione@cns.gov.*

Dated: September 9, 2008.

Frank R. Trinity,

General Counsel.

[FR Doc. E8–21633 Filed 9–11–08; 4:15 pm]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2008–OS–0044]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by October 15, 2008.

Title, Form, and OMB Number: Project Time Record System; OMB Control Number 0704–TBD

Type of Request: New.

Number of Respondents: 2,500.

Responses per Respondent: 52.

Annual Responses: 130,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 32,550.

Needs and Uses: Contractors working for the Defense Logistics Agency, Information Operations, J–6, log into an automated project time record system and annotate their time on applicable projects. The system collects the records for the purpose of tracking workload/project activity for analysis and reporting purposes, and labor distribution data against projects for financial purposes; and to monitor all aspects of a contract from a financial perspective and to maintain financial and management records associated with the operations of the contract; and to evaluate and monitor the contractor performance and other matters concerning the contract, i.e., making payments, and accounting for services provided and received. Defense Logistics Agency, Information Operations, J–6, intends to execute this option on new contracts and, as necessary, modify existing contract agreements.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Frequency: Weekly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Sharon Mar.

Written comments and recommendations on the proposed information collection should be sent to Ms. Mar at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503. Comments may be e-mailed to Ms. Mar at *Sharon_Mar@omb.eop.gov*.

You may also submit comments, identified by docket number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: September 5, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–21416 Filed 9–12–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

[Docket ID: DoD–2008–OS–0111]

Office of the Secretary; Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed public information collection and seeks public comment on the provisions thereof. 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 burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 14, 2008.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Department of Defense Education Activity, ATTN: Dr. Sandra D. Embler, 4040 North Fairfax Drive, Arlington, VA 22203–1635, or call at (703) 588–3175.

Title and OMB Control Number: Department of Defense Education Activity (DoDEA) School Accreditation Parent and Student Surveys; OMB Control Number 0704–TBD.

Needs and Uses: The Department of Defense Education Activity (DoDEA) regulation 2010.1 (Accreditation Program) requires accreditation of all DoDEA schools in order to provide the activity, the military community served by the activity, and the public at large with an external review of the quality of the educational program provided to DoDEA students. DoDEA's accreditation process is based on the processes and standards of the North Central Association Commission on Accreditation and School Improvement (NCA CASI)/AdvancED. As part of the accreditation process, the interview team uses a worldwide standardized set of questions to gather data from students and parents to assess accreditation standards in the following areas: Vision and Purpose, Governance and Leadership, Teaching and Learning, Documenting and Using Results, Resources and Support Systems, Stakeholder Communications and Relationships, and Commitment to Continuous Improvement.

Affected Public: Individuals or households.

Annual Burden Hours: 24.
Number of Respondents: 32.
Responses per Respondent: 1.
Average Burden per Response: 45 minutes.
Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

NCA CASI/AdvancED is the largest accreditation organization in the United States, covering 30 states and 65 countries. As part of the accreditation process, NCA CASI/AdvancED conducts Quality Assurance Review (QAR) visits to DoDEA schools in February and April of each year on a rotating schedule that ensures that each school is evaluated within a 5-year cycle. The visits are two days in length in order to gather data, information, and evidence to accomplish the following:

- Evaluate adherence to the AdvancED standards;
- Provide high quality feedback in the form of commendations and recommendations; and
- Determine an accreditation status recommendation.

The Quality Assurance Review team's interview process includes students and parents/guardians. The purpose of the interview session is to help the Quality Assurance Review team gain a deeper understanding of the school improvement process at the school. The review team uses the information to review how well each school is progressing, provide commendations on areas in which each school is excelling, and recommendations that will help each school continuously improve. The review team also uses the information gathered to make an accreditation status recommendation at the end of the visit.

Dated: September 5, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–21418 Filed 9–12–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–OS–0110]

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency, Office of Small Business Programs, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Defense Logistics Agency announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 14, 2008.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Director, Defense Logistics Agency, ATTN: Lindyll Finley, DB, 8725 John J. Kingman Road, Suite 1127, Fort Belvoir, VA 22060–6221, or call Ms. Lindyll Finley at (703) 767–1654.

Title; Associated Form; and OMB Number: Request for approval for Procurement Technical Assistance Center Cooperative Agreement Performance Report; DLA Form 1806; OMB Control Number 0704–0320.

Needs and Uses: The Defense Logistics Agency uses the report as the principal instrument for measuring the performance of Cooperative Agreement awards made under 10 U.S.C. Chapter 142.

Affected Public: State and local governments, private non-profit organizations, Indian tribal organizations and Indian economic enterprises.

Annual Burden Hours: 2660.
Number of Respondents: 95.
Responses per Respondent: 4.
Average Burden per Response: 7 hours.
Frequency: Quarterly.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Each cooperative agreement award recipient submitted goals and objectives in their application that were subsequently incorporated into their cooperative agreement awards. The level of achievement of these goals and the funds expended in the process of conducting the program is measured by the report. The government's continued funding of a cooperative agreement and the decision to exercise an option award for a cooperative agreement award is based to a significant degree on the award holder's current performance as measured by the report. Information from the report is also used to identify programs that may be in need of assistance and/or increased surveillance.

Dated: September 5, 2008.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–21419 Filed 9–12–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–OS–0109]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness) (Military Personnel Policy), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense (Personnel and Readiness) (Military Personnel Policy) announces the following proposed extension of a public information collection and seeks public comment on the provisions thereof. 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 burden of the

proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 14, 2008.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness) (Military Personnel Policy), ATTN: Major Eric A. Martinez, 4000 Defense Pentagon, Washington, DC 20301–4000 or call at (703) 695–5527.

Title, Associated Form, and OMB Control Number: Record of Military Processing—Armed Forces of the United States, DD Form 1966, OMB Number 0704–0173. This revision is to include USMEPCOM Form 680–3A–E, ''Request for Examination'' in the approval packet for DD Form 1966.

Needs and Uses: This information collection requirement is necessary to gather the required data for determining eligibility to join the Armed Forces and for establishing personal records on those enlisting. USMEPCOM Form 680–3A–E serves as a processing checklist and security verification of applicants for military service completing qualification requirements. Information collected on USMEPCOM Form 680–3A–E is transferred electronically into DD Form 1966 and helps decrease administration time required to complete the applicant's record.

Affected Public: The DD Form 1966 is completed by the applicant and recruiting personnel. The USMEPCOM Form 680–3A–E is completed by the applicant, recruiting and testing personnel.

Annual Burden Hours DD Form 1966: 85,170.

Number of Respondents: 510,000.

Responses per Respondent: 1.

Average Burden per Response: .167 hour (10 minutes).

Frequency: One time.

Annual Burden Hours for USMEPCOM Form 680–3A–E: 167,000.

Number of Respondents: 1,000,000.

Responses per Respondent: 1.

Average Burden per Response: .167 hour (10 minutes).

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The DD Form 1966 is completed by the applicant and Service recruiter after an oral interview and after the applicant had met all standards for enlistment (aptitude, medical, and conduct standards) mandated by DoD and sponsoring Service and elects to enlist. The information is collected and processed within a one- to two-day period and accompanies the applicant throughout the enlistment process at Military Entrance Processing Stations (MEPS). USMEPCOM Form 680–3A–E is completed on all applicants at MEPS first contact for processing; testing, medical, and other requirements. The 680–3A–E covers the process required to meet enlistment qualification. The information collected on USMEPCOM Form 680–3A–E is transferred electronically into the DD Form 1966 after the applicant meets enlistment standards and decides to enlist.

Dated: September 5, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–21420 Filed 9–12–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–OS–0108]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed extension of a public information collection and seeks public comment on the provisions thereof. 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 burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 14, 2008.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

• Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for the **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness) (Defense Human Resource Activity), ATTN: Christopher Fagan, 4000 Defense Pentagon, Washington, DC 20301–4000 or call at (703) 696–0848.

Title, Associated Form, and OMB Control Number: Application for Uniformed Services Identification Card—DEERS Enrollment; DD Form 1172, OMB Control Number 0704–0020.

Needs and Uses: This information collection requirement is necessary to obtain the necessary information to authorize members of the Uniformed Services, their spouses and dependents, and other authorized individuals certain benefits and privileges. These privileges include health care, use of commissary,

base exchange, and morale, welfare, and recreation facilities. This information collection is needed to obtain the necessary data to determine eligibility, to provide eligible individuals with an identification card for benefits and privileges administered by the Uniformed Services, and maintain a centralized database of eligible individuals.

Affected Public: Individuals or households.

Annual Burden Hours: 95,575.

Number of Respondents: 1,146,898.

Responses per Respondent: 1.

Average Burden per Response: 5 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The information collected is used to obtain necessary information to authorize members of the Uniformed Services, their spouses and dependents, and other authorized individuals certain benefits and privileges.

Dated: September 5, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–21421 Filed 9–12–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–OS–0107]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed extension of a public information collection and seeks public comment on the provisions thereof. 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 burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 14, 2008.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness) Defense Commissary Agency, ATTN DOB (Barry White), 1300 E Avenue, Fort Lee, VA 23801–1800, or call (804) 734–8974.

Title, Associated Form, and OMB Control Number: Commissary Evaluation and Utility Surveys—Generic, OMB Control Number 0704–0407.

Needs and Uses: The Defense Commissary Agency will conduct a variety of surveys on an as-needed basis. The survey population will include, but is not limited to, persons eligible to use the commissary throughout the world. The surveys will be used to assess the customer's satisfaction with various aspects of the commissary operation and obtain their opinions of various commissary issues. Surveys will also be used to help determine individual commissary market potential and commissary size requirements.

Affected Public: Individuals or Households, Businesses or Other For Profit.

Annual Burden Hours: 148 Hours.

Number of Respondents: 6,633.

Responses per Respondent: 1.

Average Burden per Response: 1.34 Minutes.

Frequency: On Occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

(All respondents are authorized patrons by DoD regulations, unless otherwise described.)

Commissary Sizing Survey

Surveys will support commissary renovation and new construction. Survey results will be used to help determine market potential and associated commissary size requirements.

Facility Site Decisions

Surveys will support commissary site decisions. Where applicable, commissary user preference can be incorporated into the site location decision process. Patrons will input their answers to questions concerning where they would like a new facility located, as well as give their opinions and concerns that will affect their shopping experience. The survey results will also be used to estimate where the commissary users are located through the use of population density maps.

Patron Migration Survey

These surveys will aid in predicting the impact to commissaries that are near a closing commissary or a commissary that is undergoing some kind of transformation that may cause commissary users to migrate to an alternative nearby commissary. The results will be used to determine requirements for the nearby receiving commissaries.

Commissary Operational Surveys

These surveys will supply information on various processes within the commissaries. The surveyed population could be commissary customers, employees within the Agency, vendors, distributors, or contractors. Persons surveyed will not necessarily be authorized commissary users.

Market Basket Price Surveys

These surveys will be administered to commissary eligible personnel to assess their perception of our savings compared to local commercial supermarkets.

Demographic Surveys

This survey will be conducted, as needed, to assess the demographic make-up of commissary users. The results may be used in conjunction with population data to reveal differences in key demographics such as status, family size, distance from a commissary, age, service membership, and military grade.

Dated: September 5, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–21422 Filed 9–12–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–OS–0091]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness/National Security Education Program, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the Office of the Under Secretary of Defense for Personnel and Readiness/National Security Education Program announces a proposed new public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 14, 2008.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense for Personnel and Readiness/National Security Education Program, ATTN: Mr. Robert Slater, PO Box 12221, Arlington, VA 22209–2221, or call at 703–696–5673.

Title; Associated Form; and OMB Number: National Language Service Corps; DD Test Forms 2932, 2933, 2934 and 2935; OMB Number 0704–0449.

Needs and Uses: The information collection requirement is necessary to identify individuals with language and special skills who potentially qualify for employment or service opportunities in the public section during periods of national need or emergency.

Affected Public: Individuals or Households.

Annual Burden Hours: 2,200.

Number of Respondents: 4,000.

Responses per Respondent: 1.75.

Average Burden per Response: 18.86 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The DD Test Form 2932, *National Language Service Corps Application*, is the initial document used to collect information from members of the public. The National Language Service Corps Application form contains a brief set of screening questions. Applicants fill this out for basic information (age, citizenship, Foreign Language), and if they meet eligibility criteria, they proceed to the supplemental documents.

The supplemental documents are used to determine eligibility for membership in the National Language Service Corps. The DD Test Form 2934, *National Language Service Corps (NLSC) Global Language Self-Assessment,* provides an overall assessment of the applicant's foreign language ability. The DD Test Form 2933, *National Language Service Corps (NLSC) Detailed Skills Self-Assessment*, is a detailed description of the applicant's skills with respect to specific foreign language tasks. The DD Test Form 2935, *National Language Service Corps (NLSC) Language Data Sheet*, provides background data on where the applicant learned the foreign language and whether the applicant has used the language professionally. These three supplemental documents are used in conjunction for the certification of language skills for entry into the NLSC and quality assurance of certification.

The information collected in the application and the supplemental documents is used solely by the National Language Service Corps.

Dated: September 5, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–21423 Filed 9–12–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent To Prepare a Draft Environmental Impact Statement for the City of Raleigh, Little River Reservoir Project in Wake County, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (COE), Wilmington District, Wilmington Regulatory Division has received a request for Department of the Army authorization, pursuant to Section 404 of the Clean Water Act, from the City of Raleigh to construct a drinking water reservoir on Little River to satisfy the future demands for the service area which includes Raleigh, Garner, Knightdale, Rolesville, Wake Forest, Wendell, and Zebulon, NC.

The proposed project would require the construction of a dam north of U.S. Highway 64 on Little River, a tributary in the Neuse River Basin. In addition, infrastructure improvements including a water treatment plant, water lines, and raising and/or closing existing roadways are expected.

DATES: A public scoping meeting for the Draft Environmental Impact Statement (DEIS) will be held at the East Wake High School at 5101 Rolesville Road, Wendell, NC 27591 on October 14, 2008 at 6:30 pm.

ADDRESSES: Copies of comments and questions regarding scoping of the Draft EIS may be addressed to: U.S. Army Corps of Engineers, Wilmington District, Regulatory Division—Raleigh Field Office, 3331 Heritage Trade Drive, Suite 105, Wake Forest, NC 27587, *ATTN:* File Number SAW–2004–9984752.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be directed to Mr. Monte Matthews, Regulatory Division, *telephone:* (919) 554–4884, Extension 30.

SUPPLEMENTARY INFORMATION: The proposed Little River Reservoir site is located north of U.S. Highway 64, near Zebulon, Wake County, NC. The proposed reservoir would be comprised of approximately 1,100 acres of surface water at a normal pool elevation of 260 feet mean sea level. This would supply the service area with 17 million gallons per day (mgd) of drinking water. Impounded water would extend from the proposed dam site north to an area just south of State Route #2224, Mitchell Mill Road. The proposed project site includes undeveloped forested lands, existing farm fields, and beaver impacted streams and wetlands. This portion of Little River is classified as WS–II, High Quality Waters, Nutrient Sensitive Waters by the North Carolina Department of Environment and Natural Resources.

The City of Raleigh has provided the following information about the purpose of the proposed project:

The purpose of the proposed project is to develop a safe and dependable water supply for the project service area that, together with existing supplies, will satisfy estimated water demands for a planning period of approximately 30 years, and that will reinforce water system's reliability during periods of drought and other water emergencies. Furthermore, an adequate water supply is necessary to support continued growth of the service area. The service area for the proposed project includes the City of Raleigh and the Towns of Garner, Knightdale, Rolesville, Wake Forest, Wendell, and Zebulon, NC. The water and wastewater utilities for these six towns have been merged with the utilities for the City of Raleigh. The City of Raleigh also provides water to other communities in Wake County (Holly Springs and Fuquay-Varina) under existing sales contracts. The population projections for the service area are expected to increase from 489,000 people in 2010 to 896,200 people in 2040.

To continue, the water supply sources that currently provide drinking water for the project service area, including the communities served by sales contracts, encompass Falls Lake, Lake Benson/Lake Wheeler (scheduled to go on-line in 2010), and the Smith Creek Reservoir. The existing safe yield of the Smith Creek Reservoir is approximately 1 mgd, and the use of this source for water supply is currently planned to be discontinued. The existing 50-year safe yield of Falls Lake and Lake Benson/Lake Wheeler is approximately 78.4 mgd. The projected water demand for the project service area for the Year 2040 is approximately 93 mgd. This projection includes allowances for sustainable reductions in water demand due to water conservation and reuse, which are important components of the City of Raleigh's long-term water supply planning. On this basis, the proposed project, operated in conjunction with existing supplies as noted above, will meet the project service area demand through 2040. An additional water supply source will also increase the water system's reliability during short-term or catastrophic interruptions in the system due to line break or equipment breakdowns.

Proposed Impacts to Wetlands and Surface Waters: Surface waters and wetlands have been delineated for the proposed project site. Field reviews of the delineations with the U.S. Army Corps of Engineers (USACE), and North Carolina Division of Water Quality (DWQ) have been conducted with final USACE verification of the streams and wetlands delineation pending. The proposed reservoir will impact approximately 650 acres of wetlands and 55,500 linear feet of stream channel.

Scope of Investigations: Based upon the proposed impacts to wetlands and streams, the City of Raleigh has indicated to the U.S. Army Corps of Engineers that they are willing to pursue an Environmental Impact Statement (EIS) for the proposed Project. The scope of the EIS investigation will include the following: Alternatives analyses, Affected environment, Environmental consequences, Secondary and cumulative environmental impacts, and Mitigation.

Alternatives analyses: Council on Environmental Quality (CEQ) regulations (40 CFR 1502.14(a)) require an EIS to ''rigorously explore and objectively evaluate all reasonable alternatives'' for a proposed action. The regulations (40 CFR 1502.14(b)) further require that substantial treatment be made of each alternative considered in detail, including the proposed action. The Proposed Project and a reasonable number of alternatives, including the no action alternative, Use of Existing Reservoirs (Falls Lake, Lake Benson, Jordan Lake, and/or Kerr Lake), Alternative Reservoir Sites, Construction of Several Reservoirs, River or Stream Intake, Upland Constructed Flow Augmentation Reservoir, Purchasing Water from Other Systems, Development of Groundwater Supplies, Recycle and Reuse of Wastewater, Water Conservation, and any Combination of Alternatives will be evaluated and compared in the EIS. The factors used to compare the alternatives will be the same for each of the alternatives.

Affected environment: CEQ regulations (40 CFR 1502.15) require the EIS to describe the environment of the areas to be affected or created by the alternatives under consideration. The data and analysis shall be commensurate with the importance of the impact. Based upon preliminary evaluation of the proposed Project, it appears the primary areas of environmental concern will focus on the loss of wetlands and/or streams and other aquatic resource functions and values, mitigation of such losses, and the effect of the proposed reservoir on downstream water quality.

In preparation for the EIS, the following studies have been completed or are ongoing for the proposed Project:

- An in-house Environmental Assessment, Phase I Report completed by the applicant in January 1990. This report will be included as an appendix to the EIS.
- An in-stream flow study composed of an interagency technical group to develop a technically defensible study, including alternatives, for releases of minimum flow. This report detailing the methodologies and results of the study will be included as an appendix to the EIS.
- Jurisdictional wetland/stream/open waters delineations (Section 404 Jurisdictional Areas) (field reviews have been conducted with USACE and DWQ with final verification pending). A technical report detailing the methodologies and results of the jurisdictional areas delineation will be included as an appendix to the EIS.
- Archaeological investigations and field survey. A technical report detailing the methodologies and results of the archaeological investigation and survey will be included as an appendix to the EIS.

Environmental consequences: CEQ regulations (40 CFR 1502.16) state the EIS will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. The EIS will identify and disclose the direct impacts of the proposed project and study a reasonable number of alternatives on the following: Topography, geology, soils, climate, biotic communities, wetlands, fish and wildlife resources, endangered and threatened species, hydrology, water

resources and water quality, floodplains, hazardous materials, air quality, noise, aesthetics, recreational resources, historical and cultural resources, socioeconomics, land use, public health and safety, energy requirements and conservation, natural or non-renewable resources, drinking waters, and environmental justice.

Secondary and cumulative environmental impacts: Cumulative impacts result from the incremental impact of the proposed action when added to past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes the action. GIS data and mapping will be used to evaluate and quantify secondary and cumulative impacts of the proposed Project with particular emphasis given to wetlands and surface/groundwater resources.

Mitigation: CEQ regulations (40 CFR 1502.14, 1502.16, and 1508.20) require the EIS to include appropriate mitigation measures. The USACE has adopted, through the CEQ, a mitigation policy which embraces the concepts of ''no net loss of wetlands'' and project sequencing. The purpose of this policy is to restore and maintain the chemical, biological, and physical integrity of ''Waters of the United States,'' specifically wetlands. Mitigation of wetland impacts has been defined by the CEQ to include: avoidance of impacts (to wetlands), minimizing impacts, rectifying impacts, reducing impacts over time, and compensating for impacts (40 CFR 1508.20). Each of these aspects (avoidance, minimization, and compensatory mitigation) must be considered in sequential order. As part of the EIS, the applicant will develop a compensatory mitigation plan detailing the methodology and approach to compensate for unavoidable impacts to waters of the U.S. including streams and wetlands.

NEPA/SEPA Preparation and Permitting: Because the proposed Little River Reservoir project requires approvals from federal and state agencies under both the National Environmental Policy Act (NEPA) and the State Environmental Policy Act (SEPA), a joint Federal and State Environmental Impact Statement (EIS) will be prepared. The U.S. Army Corps of Engineers will serve as the lead agency for the process. The EIS will be the NEPA document for the Corps of Engineers (404 permit) and the SEPA document for the State of North Carolina (401 permit).

Based on the size, complexity, and potential impacts of the proposed project, the Applicant has been advised by the U.S. Army Corps of Engineers to identify and disclose the environmental impacts of the proposed project in an Environmental Impact Statement (EIS). Within the EIS, the Applicant will conduct a thorough environmental review, including an evaluation of a reasonable number of alternatives. After distribution and review of the Draft EIS and Final EIS, the Applicant understands that the U.S. Army Corps of Engineers will issue a Record of Decision (ROD) for the project. The ROD will document the completion of the EIS process and will serve as a basis for permitting decisions by Federal and State agencies.

Jefferson M. Ryscavage,

Colonel, U.S. Army, District Commander.

[FR Doc. E8–21426 Filed 9–12–08; 8:45 am]

BILLING CODE 3710–GN–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

September 10, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP00–157–020.
Applicants: Kern River Gas Transmission Company.
Description: Kern River Gas Transmission Co submits Original Sheet 495–A and 499–B to FERC Gas Tariff, Second Revised Volume 1.
Filed Date: 08/28/2008.
Accession Number: 20080903–0046.
Comment Date: 5 p.m. Eastern Time on Friday, September 12, 2008.

Docket Numbers: RP08–198–002.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company LP submits Fourth Revised Sheet 805A et al. to FERC Gas Tariff, Sixth Revised Volume 1, to be effective 8/17/08.
Filed Date: 08/28/2008.
Accession Number: 20080829–0093.
Comment Date: 5 p.m. Eastern Time on Friday, September 12, 2008.

Docket Numbers: RP08–613–000.
Applicants: Alliance Pipeline L.P.
Description: Alliance Pipeline, LP submits Fifth Revised Sheet 244 et al to FERC Gas Tariff, Original Volume 1, effective 10/1/08.
Filed Date: 09/08/2008.
Accession Number: 20080909–0095.
Comment Date: 5 p.m. Eastern Time on Monday, September 22, 2008.

Docket Numbers: RP08–614–000.
Applicants: Columbia Gas Transmission Corporation.
Description: Columbia Gas Transmission Corporation submits Thirty-Eighth Revised Sheet 30A et al to FERC Gas Tariff, Second Revised Volume 1, effective 10/8/08.
Filed Date: 09/08/2008.
Accession Number: 20080909–0094.
Comment Date: 5 p.m. Eastern Time on Monday, September 22, 2008.

Docket Numbers: RP08–615–000.
Applicants: Trunkline Gas Company, LLC.
Description: Trunkline Gas Company, LLC submits its Annual Report of Flow Through of Cash Out and Penalty Revenues for the period of May 2006 through April 2007.
Filed Date: 09/08/2008.
Accession Number: 20080909–0093.
Comment Date: 5 p.m. Eastern Time on Monday, September 22, 2008.

Docket Numbers: RP08–616–000.
Applicants: Trunkline Gas Company, LLC.
Description: Trunkline Gas Company, LLC submits its Annual Report of Flow Through of Cash Out and Penalty Revenues for the period of May 2007 through April 2008.
Filed Date: 09/08/2008.
Accession Number: 20080909–0092.
Comment Date: 5 p.m. Eastern Time on Monday, September 22, 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. E8–21456 Filed 9–12–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 9, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–121–000.

Applicants: Grand Ridge Energy LLC; Aircraft Services Corporation; METROPOLITAN LIFE INSURANCE CO.

Description: Grand Ridge Energy LLC *et al.* submits an application for authorization under Section 203 of the Federal Power Act and Request for Waivers and Expedited Action.

Filed Date: 09/03/2008.

Accession Number: 20080905–0108.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 24, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08–94–000.

Applicants: Fowler Ridge Wind Farm LLC.

Description: Notice of Self-Certification as an Exempt Wholesale Generator.

Filed Date: 09/05/2008.

Accession Number: 20080905–5129.

Comment Date: 5 p.m. Eastern Time on Friday, September 26, 2008.

Docket Numbers: EG08–95–000.

Applicants: Flat Ridge Wind Energy, LLC.

Description: Notice of Self-Certification as an Exempt Wholesale Generator.

Filed Date: 09/08/2008.

Accession Number: 20080908–5040.

Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: EG08–96–000.

Applicants: Fowler Ridge III Wind Farm LLC.

Description: Notice of Self-Certification as an Exempt Wholesale Generator under EG08–96.

Filed Date: 09/08/2008.

Accession Number: 20080908–5108.

Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96–780–020.

Applicants: Southern Company Services, Inc.

Description: Southern Companies submits the updated market power analysis performed for Southern Companies.

Filed Date: 09/02/2008.

Accession Number: 20080905–0104.

Comment Date: 5 p.m. Eastern Time on Monday, November 3, 2008.

Docket Numbers: ER96–1085–013.

Applicants: South Carolina Electric & Gas Company.

Description: South Carolina Electric & Gas Company submits an updated power analysis supporting SCE&G's continued authorization to make wholesale power sales as market-based rates.

Filed Date: 09/02/2008.

Accession Number: 20080908–0156.

Comment Date: 5 p.m. Eastern Time on Monday, November 3, 2008.

Docket Numbers: ER97–2846–013; ER99–2311–010.

Applicants: Florida Power Corporation; Carolina Power & Light Company.

Description: Progress Energy Inc. *et al.* submits an updated market power analysis in compliance with Order 697–A.

Filed Date: 09/02/2008.

Accession Number: 20080905–0135.

Comment Date: 5 p.m. Eastern Time on Monday, November 3, 2008.

Docket Numbers: ER97–3359–011; ER01–2074–008; ER98–3566–016.

Applicants: Florida Power & Light Company; Calhoun Power Company I, LLC; FPL Energy Power Marketing, Inc.

Description: Florida Power & Light Co. *et al.* submits their triennial market power update for the Southeast region.

Filed Date: 09/02/2008.

Accession Number: 20080908–0153.

Comment Date: 5 p.m. Eastern Time on Monday, November 3, 2008.

Docket Numbers: ER00–1712–008; ER02–2408–003; ER00–744–006; ER02–1327–005; ER00–1703–003; ER02–1749–003; ER02–1747–003; ER99–4503–005; ER00–2186–003; ER01–1559–004.

Applicants: PPL Electric Utilities Corporation; Lower Mount Bethel Energy, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; PPL Martins Creek, LLC; PPL Susquehanna, LLC; PPL University Park, LLC; PPL EnergyPlus, LLC; PPL Edgewood Energy, LLC; PPL Shoreham Energy, LLC; PPL Great Works, LLC; PPL Maine, LLC; PPL Wallingford Energy LLC.

Description: PPL Electric Utilities Corporation *et al.* submits a revised market power analysis that incorporates the results of the updated simultaneous import limitation studies for the PJM balancing authority area market, etc.

Filed Date: 09/02/2008.

Accession Number: 20080908–0168.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 23, 2008.

Docket Numbers: ER01–468–008; ER00–3621–009; ER00–3746–009; ER04–318–004; ER05–36–005; ER05–37–005; ER05–34–003; ER05–35–005; ER04–249–005; ER99–1695–010; ER97–30–006; ER02–23–011; ER07–1306–004; ER96–2869–013; ER97–3561–005; ER00–1737–011.

Applicants: Dominion Energy Brayton Point, LLC; Dominion Energy Kewaunee, Inc.; Dominion Energy Manchester Street, Inc.; Dominion Energy Marketing, Inc.; Dominion Energy New England, Inc.; Dominion Energy Salem; Dominion Nuclear Connecticut, Inc.; DOMINION NUCLEAR MARKETING III, LLC; Dominion Retail, Inc.; Elwood Energy, LLC; Fairless Energy, LLC; Kincaid Generation, LLC; NedPower Mount Storm, LLC; State Line Energy, LLC; Virginia Electric and Power Company.

Description: Virginia Electric and Power Co. *et al.* submits a Supplemental Affidavit of Julie R. Solomon to revise the market power analysis.

Filed Date: 09/02/2008.

Accession Number: 20080904–0524.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 23, 2008.

Docket Numbers: ER02–579–008.

Applicants: TORYS LLP.

Description: Notification of Change in Status.

Filed Date: 09/05/2008.

Accession Number: 20080905–5053.

Comment Date: 5 p.m. Eastern Time on Friday, September 26, 2008.

Docket Numbers: ER02–580–009.

Applicants: Pawtucket Power Associates Limited Partnership.

Description: Notification of Change in Status for Pawtucket Power Associates Limited Partnership.
Filed Date: 09/05/2008.
Accession Number: 20080905–5043.
Comment Date: 5 p.m. Eastern Time on Friday, September 26, 2008.

Docket Numbers: ER02–973–006.
Applicants: UBS AG.
Description: Application by UBS AG for Category Exemption in the Southeast and Northwest and for determination of Category 1 Status in the Southwest.
Filed Date: 09/02/2008.
Accession Number: 20080908–0151.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 23, 2008.

Docket Numbers: ER04–617–003; ER99–3911–006.
Applicants: Black River Generation, LLC; Northbrook New York, LLC.
Description: Black River Generation, LLC *et al.* submits responses to FERC's Staff Request under Order 697 re Substitute Second Revised Sheet 1 to FERC Electric Tariff, First Revised Volume 1.
Filed Date: 09/05/2008.
Accession Number: 20080908–0200.
Comment Date: 5 p.m. Eastern Time on Friday, September 26, 2008.

Docket Numbers: ER05–968–003.
Applicants: TORYS LLP.
Description: Notification of Change in Status.
Filed Date: 09/05/2008.
Accession Number: 20080905–5052.
Comment Date: 5 p.m. Eastern Time on Friday, September 26, 2008.

Docket Numbers: ER05–493–003; ER05–494–003; ER05–495–003; ER08–901–003.
Applicants: Saracen Energy Power Advisors LP; Saracen Merchant Energy LP; Saracen Energy Partners, LP; Saracen Energy LP.
Description: Saracen Power Marketers submits revised rate schedule sheets to allow each to sell ancillary services in the Ancillary Services Market.
Filed Date: 09/04/2008.
Accession Number: 20080908–0152.
Comment Date: 5 p.m. Eastern Time on Thursday, September 25, 2008.

Docket Numbers: ER05–1262–016; ER06–1093–012.
Applicants: Flat Rock Windpower LLC.
Description: Flat Rock Windpower LLC submits revised tariff sheets in compliance with Order 697–A.
Filed Date: 09/03/2008.
Accession Number: 20080904–0521.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 24, 2008.

Docket Numbers: ER06–1355–003.
Applicants: Evergreen Wind Power LLC.
Description: Supplemental Order No. 697 Compliance Filing of Evergreen Wind Power LLC.
Filed Date: 09/05/2008.
Accession Number: 20080905–5134.
Comment Date: 5 p.m. Eastern Time on Friday, September 26, 2008.

Docket Numbers: ER07–352–002.
Applicants: S.D. Warren Company.
Description: SD Warren Co. submits Substitute First Revised Sheet 1 *et al.* to FERC Electric Tariff, Original Volume 1.
Filed Date: 09/03/2008.
Accession Number: 20080904–0523.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 24, 2008.

Docket Numbers: ER07–1212–002.
Applicants: TORYS LLP.
Description: Notification of Change in Status.
Filed Date: 09/05/2008.
Accession Number: 20080905–5054.
Comment Date: 5 p.m. Eastern Time on Friday, September 26, 2008.

Docket Numbers: ER08–891–001.
Applicants: Wisconsin Power and Light Company.
Description: Wisconsin Power and Light Co. submits a corrected agreement that designates it as Wholesale Power Supply Agreement 1.
Filed Date: 09/03/2008.
Accession Number: 20080904–0519.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 24, 2008.

Docket Numbers: ER08–911–001.
Applicants: Alliant Energy Corporate Services, Inc.
Description: Wisconsin Power and Light Company submits a corrected wholesale power agreement that was originally submitted 5/2/08 with Rock Energy Cooperative.
Filed Date: 09/03/2008.
Accession Number: 20080904–0520.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 24, 2008.

Docket Numbers: ER08–924–001.
Applicants: Alliant Energy Corporate Services, Inc.
Description: Wisconsin Power and Light Co. submits their correct agreement with the Wholesale Power Supplement Agreement 2.
Filed Date: 09/03/2008.
Accession Number: 20080904–0518.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 24, 2008.

Docket Numbers: ER08–1348–001.
Applicants: Hardee Power Partners Limited.
Description: Hardee Power Partners Limited submits supplements to their 7/31/08 filing of the Hardee Switchyard Facilities Sharing Agreement with Seminole Electric Coop, Inc.
Filed Date: 09/04/2008.
Accession Number: 20080908–0150.
Comment Date: 5 p.m. Eastern Time on Thursday, September 25, 2008.

Docket Numbers: ER08–1467–000.
Applicants: Mississippi Power Company.
Description: Mississippi Power Company submits revised electric tariff and rates for wholesale, full-requirements electric service, FERC Electric Tariff, Third Revised Volume 1.
Filed Date: 08/29/2008.
Accession Number: 20080908–0171.
Comment Date: 5 p.m. Eastern Time on Friday, September 19, 2008.

Docket Numbers: ER08–1484–000.
Applicants: Entergy Services, Inc.
Description: Entergy Services, Inc on behalf of Entergy Operating Companies seeks acceptance of two, limited deviations from the Commission approved System Agreement Service Schedule MSS–4, effective 9/3/08.
Filed Date: 09/02/2008.
Accession Number: 20080903–0142.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 23, 2008.

Docket Numbers: ER08–1486–000.
Applicants: Midwest Independent System Transmission.
Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to its Open Access Transmission and Energy Markets Tariff.
Filed Date: 08/29/2008.
Accession Number: 20080903–0302.
Comment Date: 5 p.m. Eastern Time on Friday, September 19, 2008.

Docket Numbers: ER08–1489–001.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits a Clean Version of the 9/2/08 executed Meter Agent Service Agreement as Exhibit I with its proper designation.
Filed Date: 09/04/2008.
Accession Number: 20080908–0154.
Comment Date: 5 p.m. Eastern Time on Thursday, September 25, 2008.

Docket Numbers: ER08–1497–000.
Applicants: Sierra Pacific Power Company.
Description: Sierra Pacific Power Co submits an executed Service Agreement for Conditional Firm Point-to-Point Transmission Service with Mt Wheeler Power.
Filed Date: 09/04/2008.
Accession Number: 20080908–0149.
Comment Date: 5 p.m. Eastern Time on Thursday, September 25, 2008.

Docket Numbers: ER08–1498–000.
Applicants: Old Dominion Electric Cooperative, Inc.
Description: Application for acceptance of Second Amended and

Restated Wholesale Power Contract and Changes to Rate Formula by Old Dominion Electric Cooperative.
Filed Date: 09/04/2008.
Accession Number: 20080908–0161.
Comment Date: 5 p.m. Eastern Time on Thursday, September 25, 2008.

Docket Numbers: ER08–1499–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection LLC submits an executed Wholesale Market Participation Agreement entered into with the Baltimore Sun Company Inc.
Filed Date: 09/05/2008.
Accession Number: 20080908–0189.
Comment Date: 5 p.m. Eastern Time on Friday, September 26, 2008.

Docket Numbers: ER08–1500–000.
Applicants: Central Maine Power Company.
Description: Central Maine Power Company submits an Engineering and Procurement Agreement dated 8/8/08 with TransCanada Maine Wind Development, Inc.
Filed Date: 09/05/2008.
Accession Number: 20080908–0188.
Comment Date: 5 p.m. Eastern Time on Friday, September 26, 2008.

Docket Numbers: ER08–1501–000.
Applicants: Southwestern Electric Power Company.
Description: Southwestern Electric Power Company submits a Power Supply Agreement dated 6/30/08 designated as Rate Schedule 127 with City of Prescott, Arkansas.
Filed Date: 09/05/2008.
Accession Number: 20080908–0187.
Comment Date: 5 p.m. Eastern Time on Friday, September 26, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–127–000.
Applicants: Avista Corporation.
Description: Avista Corporation's Order No. 890–B Compliance Filing.
Filed Date: 09/05/2008.
Accession Number: 20080905–5032.
Comment Date: 5 p.m. Eastern Time on Friday, September 26, 2008.

Docket Numbers: OA08–128–000.
Applicants: Portland General Electric Company.
Description: Order No. 890 OATT Filing.
Filed Date: 09/05/2008.
Accession Number: 20080905–5124.
Comment Date: 5 p.m. Eastern Time on Friday, September 26, 2008.

Docket Numbers: OA08–32–003.
Applicants: Entergy Services, Inc.
Description: Order No. 890 OATT Compliance Filing of Entergy Services, Inc.
Filed Date: 09/05/2008.
Accession Number: 20080905–5148.
Comment Date: 5 p.m. Eastern Time on Friday, September 26, 2008.

Docket Numbers: OA08–129–000.
Applicants: Carolina Power & Light Company d/b/a Pro,Florida Power Corp. d/b/a Progress Energ,Progress Energy, Inc.
Description: Order No. 890–B OATT Compliance Filing.
Filed Date: 09/08/2008.
Accession Number: 20080908–5017.
Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: OA08–130–000.
Applicants: El Paso Electric Company.
Description: Order No. 890–B Compliance Filing.
Filed Date: 09/08/2008.
Accession Number: 20080908–5041.
Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: OA08–131–000.
Applicants: South Carolina Electric & Gas Company.
Description: Order No. 890–B OATT Compliance Filing.
Filed Date: 09/08/2008.
Accession Number: 20080908–5042.
Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: OA08–132–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits Second Revised Sheet 21 *et al.* to FERC Electric Tariff, 7th Revised Volume 11 pursuant to Order 890 OATT Filing.
Filed Date: 09/08/2008.
Accession Number: 20080908–5066.
Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: OA08–133–000.
Applicants: Tucson Electric Power Company.
Description: Order No. 890 OATT Filing of Tucson Electric Power Company.
Filed Date: 09/08/2008.
Accession Number: 20080908–5067.
Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: OA08–134–000.
Applicants: UNS Electric, Inc.
Description: Order No. 890 OATT Filing of UNS Electric, Inc.
Filed Date: 09/08/2008.
Accession Number: 20080908–5068.
Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: OA08–135–000.
Applicants: Florida Power & Light Company.
Description: Compliance Filing of Order 890 OATT of Florida Power & Light Company.
Filed Date: 09/08/2008.
Accession Number: 20080908–5069.
Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: OA08–136–000.
Applicants: NorthWestern Corporation.
Description: Order No. 890 OATT Filing of NorthWestern Corporation.
Filed Date: 09/08/2008.
Accession Number: 20080908–5073.
Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: OA08–137–000.
Applicants: Sierra Pacific Resources Operating Company; Sierra Pacific Power Company; Nevada Power Company.
Description: Order No. 890–B OATT Filing.
Filed Date: 09/08/2008.
Accession Number: 20080908–5074.
Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: OA08–138–000.
Applicants: Cleco Power LLC.
Description: Order No. 890–B Compliance Filing.
Filed Date: 09/08/2008.
Accession Number: 20080908–5076.
Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: OA08–139–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Order No. 890–B OATT Filing of Duke Energy Carolinas, LLC.
Filed Date: 09/08/2008.
Accession Number: 20080908–5079.
Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: OA08–140–000.
Applicants: E.ON U.S. LLC, Louisville Gas and Electric Company, Kentucky Utilities Company.
Description: Order No. 890–B OATT Filing.
Filed Date: 09/08/2008.
Accession Number: 20080908–5082.
Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: OA08–141–000.
Applicants: Deseret Generation & Transmission Co-op.
Description: Order No. 890–B OATT Compliance Filing.
Filed Date: 09/08/2008.
Accession Number: 20080908–5083.
Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: OA08–142–000.
Applicants: Puget Sound Energy, Inc.
Description: Order No. 890 OATT Filing.
Filed Date: 09/08/2008.
Accession Number: 20080908–5084.
Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: OA08–143–000.
Applicants: Tampa Electric Company.
Description: Order No. 890–B Compliance Filing.
Filed Date: 09/08/2008.
Accession Number: 20080908–5086.
Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: OA08–144–000.
Applicants: Southern Company Services, Inc.
Description: Order No. 890–B Compliance Filing of Southern Company Services, Inc.
Filed Date: 09/08/2008.
Accession Number: 20080908–5093.
Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: OA08–145–000.
Applicants: NewCorp Resources Electric Cooperative,
Description: Order No. 890–B OATT Filing.
Filed Date: 09/08/2008.
Accession Number: 20080908–5096.
Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: OA08–146–000.
Applicants: NORTHWESTERN CORP.
Description: Order No. 890–B Compliance Filing.
Filed Date: 09/08/2008.
Accession Number: 20080908–5097.
Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: OA08–147–000.
Applicants: Xcel Energy Services, Inc.
Description: Order No. 890–B OATT Filing.
Filed Date: 09/08/2008.
Accession Number: 20080908–5103.
Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: OA08–148–000.
Applicants: Maine Public Service Company.
Description: Order No. 890–B Compliance Filing.
Filed Date: 09/08/2008.
Accession Number: 20080908–5112.
Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: OA08–149–000.
Applicants: ENTERGY SERVICES INC.
Description: Order No. 890–B OATT Filing.
Filed Date: 09/08/2008.
Accession Number: 20080908–5147.
Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: OA08–150–000.
Applicants: MidAmerican Energy Company.
Description: Order No. 890–B implementation filing.
Filed Date: 09/05/2008.
Accession Number: 20080905–5150.
Comment Date: 5 p.m. Eastern Time on Friday, September 26, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–21457 Filed 9–12–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR97–1–006]

Consumers Power Company; Notice of Compliance Filing

September 8, 2008.

Take notice that on August 27, 2008, Consumers Energy Company (Consumers), formerly Consumers Power Company, submitted a compliance filing to revise its Settlement Agreement which, according to Consumers, contains a standard of review provision in Article X, section 11.6, that has been revised consistent with Paragraph 4 of the Commission's July 28 Order in Docket Nos. PR97–1–004 and PR97–1–005.

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 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 19, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–21389 Filed 9–12–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–87–000]

Electric Power Supply Association; Notice of Petition

September 8, 2008.

Take notice that on September 2, 2008, the Electric Power Supply Association filed a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) requesting guidance with respect to the question of when investments in publicly-held companies will be deemed to convey ''control'' or to result in ''affiliation'' for purposes of the Commission's market-based rate requirements under section 205 of the Federal Power Act (16 U.S.C. 824d) and the requirements of section 203 of the Federal Power Act (16 U.S.C. 824b) and the Commission's regulations thereunder.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Motions to intervene and protests must be served on the petitioner.

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 30, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–21390 Filed 9–12–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8715–5]

Clean Water Act Section 303(d): Availability of List Decisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: This notice announces the availability of EPA's Responsiveness Summary Concerning EPA's June 17, 2008 Public Notice of Final Decisions To Add Waters and Pollutants to Arkansas' 2006 Section 303(d) List.

On June 17, 2008, EPA published a notice in the **Federal Register** at Volume 73, Number 117, pages 34295–34296 providing the public the opportunity to review its final decisions to add waters and pollutants to Arkansas' 2006 Section 303(d) List as required by EPA's Public Participation regulations (40 CFR Part 25). Based on the Responsiveness Summary, EPA has decided to remove six waterbody pollutant combinations identified in EPA's Final Action on Arkansas' 2006 Section 303(d) list based on additional information provided by the Arkansas Department of Environmental Quality. Therefore, EPA has revised its decision to disapprove Arkansas' decisions not to list 73 water body-pollutant combinations instead of 79 waterbody pollutant combinations. A listing of these 73 water body pollutant-combinations along with priority rankings for inclusion on the 2006 Section 303(d) List can be found in Table 2 of EPA's Responsiveness Summary.

ADDRESSES: Copies of EPA's Responsiveness Summary Concerning EPA's June 17, 2008 Public Notice of Final Decisions to Add Waters and Pollutants to Arkansas; 2006 Section 303(d) List and the list of 73 waterbody-pollutant pairs can be obtained at EPA Region 6's Web site at *http://www.epa.gov/region06/water/npdes/tmdl/index.htm*, or by writing or calling Ms. Diane Smith at Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733, telephone (214) 665–2145, facsimile (214) 665–6490, or e-mail: *smith.diane@epa.gov*. Underlying documents from the administrative record for these decisions are available for public inspection at the above address. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish Total Maximum Daily Loads (TMDLs) according to a priority ranking.

Consistent with EPA's regulations, Arkansas submitted to EPA its listing decisions under Section 303(d) on April 28, 2008. On June 6, 2008, EPA approved Arkansas' listing of 321 water body-pollutant combinations and associated priority rankings. EPA took neither an approval or disapproval action on 36 waters listed for beryllium. EPA disapproved Arkansas' decisions not to list 79 water body-pollutant combinations. Based on the public comments, EPA has revised its decision to disapprove Arkansas's decision not to list 73 water body-pollutant combinations. A listing of these 73 water body pollutant-combinations along with priority rankings for inclusion on the 2006 Section 303(d) List can be found in Table 2 of EPA's Responsiveness Summary.

Dated: September 5, 2008.

William K. Honker,

Deputy Director, Water Quality Protection Division, Region 6.

[FR Doc. E8–21498 Filed 9–12–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2006–0771; FRL–8715–4]

RIN 2040–AE89

Notice of Final 2008 Effluent Guidelines Program Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final 2008 Effluent Guidelines Program Plan.

SUMMARY: EPA establishes national technology-based regulations known as effluent guidelines and pretreatment standards to reduce pollutant discharges from categories of industry discharging directly to waters of the United States or discharging indirectly through Publicly Owned Treatment Works (POTWs). The Clean Water Act (CWA) sections 301(d), 304(b), 304(g), and 307(b) require EPA to review these effluent guidelines and pretreatment standards. This notice presents EPA's 2008 review of existing effluent guidelines and pretreatment standards. It also presents EPA's evaluation of indirect dischargers without categorical pretreatment standards to identify potential new categories for pretreatment standards under CWA sections 304(g) and 307(b). This notice also presents the final 2008 Effluent Guidelines Program Plan (''final 2008 Plan''), which, as required under CWA section 304(m), identifies any new or existing industrial categories selected for effluent guidelines rulemaking and provides a schedule for such rulemaking. CWA section 304(m) requires EPA to biennially publish such a plan after public notice and comment. The Agency published the preliminary 2008 Plan on October 30, 2007 (72 FR 61335). This notice also provides EPA's preliminary thoughts concerning its 2009 annual reviews under CWA sections 304(b) and 304(g) as well as its reviews under 301(d) and 307(b) and solicits comments, data and information to assist EPA in performing these reviews. EPA intends to continue its detailed studies of the steam electric power generating industry, the health services industry, and the coalbed methane extraction industry, which is part of the oil and gas extraction industry. Finally, EPA is using this notice to solicit public comment to identify industry sectors and facilities that use water efficiency practices that promote water efficiency, re-use, and recycling because such practices can be related to reducing overall pollutant discharges.

ADDRESSES: Submit your comments, data and information for the 2009 annual review, identified by Docket ID No. EPA–HQ–OW–2008–0517, by one of the following methods:

(1) *www.regulations.gov.* Follow the on-line instructions for submitting comments.

(2) *E-mail: OW-Docket@epa.gov,* Attention Docket ID No. EPA–HQ–OW–2008–0517.

(3) *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 4203M, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OW–2008–0517. Please include a total of 3 copies.

(4) *Hand Delivery:* Water Docket, EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–OW–2008–0517. Such deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2008–0517. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The federal 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the index at *www.regulations.gov.* 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 at *www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

Key documents providing additional information about EPA's annual reviews and the final 2008 Effluent Guidelines Program Plan include the following:

- Technical Support Document for the 2008 Effluent Guidelines Program Plan, EPA–821–R–08–015, DCN 05515;
- Steam Electric Power Generating Point Source Category: 2007/2008 Detailed Study Report, EPA–821–R–08–011, DCN 05516;
- Coal Mining Detailed Study, EPA–821–R–08–012, DCN 05517;
- Health Services Industry Detailed Study: Dental Amalgam, EPA–821–R–08–014, DCN 05518; and
- Health Services Industry Detailed Study: Management and Disposal of Unused Pharmaceuticals (Interim Technical Report), EPA–821–R–08–013, DCN 05519.

FOR FURTHER INFORMATION CONTACT: Mr. Carey A. Johnston at (202) 566–1014 or *johnston.carey@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Is This Document Organized?

The outline of this notice follows.

I. General Information
II. Legal Authority
III. What Is the Purpose of This **Federal Register** Notice?
IV. Background
V. EPA's 2008 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), and 307(b)
VI. EPA's 2009 Annual Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), and 307(b)
VII. EPA's Evaluation of Categories of Indirect Dischargers Without Categorical Pretreatment Standards To Identify Potential New Categories for Pretreatment Standards
VIII. The Final 2008 Effluent Guidelines Program Plan Under Section 304(m)
IX. Request for Comment and Information

I. General Information

A. Does This Action Apply to Me?

This notice simply provides a statement of the Agency's effluent guidelines review and planning processes and priorities at this time, and does not contain any regulatory requirements.

B. What Should I Consider as I Prepare My Comments for EPA for the 2009 Annual Review?

1. Submitting Confidential Business Information

Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

II. Legal Authority

This notice is published under the authority of the CWA, 33 U.S.C. 1251, *et seq.*, and in particular sections 301(d), 304(b), 304(g), 304(m), 306, 307(b), 308, 33 U.S.C. 1311(d), 1314(b), 1314(g), 1314(m), 1316, 1317(b), and 1318.

III. What Is the Purpose of This Federal Register Notice?

This notice presents EPA's 2008 review of existing effluent guidelines and pretreatment standards under CWA sections 301(d), 304(b), 304(g) and 307(b). It also presents EPA's evaluation of indirect dischargers without categorical pretreatment standards to identify potential new categories for pretreatment standards under CWA sections 304(g) and 307(b). This notice also presents the final 2008 Effluent Guidelines Program Plan (''final 2008 Plan''), which, as required under CWA section 304(m), identifies any new or existing industrial categories selected for effluent guidelines rulemaking and provides a schedule for such rulemaking. CWA section 304(m) requires EPA to biennially publish such a plan after public notice and comment. The Agency published the preliminary 2008 Plan on October 30, 2007 (72 FR 61335). This notice also provides EPA's preliminary thoughts concerning its 2009 annual reviews under CWA sections 301(d), 304(b), 304(g) and 307(b) and solicits comments, data and information to assist EPA in performing these reviews.

IV. Background

A. What Are Effluent Guidelines and Pretreatment Standards?

The CWA directs EPA to promulgate effluent limitations guidelines and standards (''effluent guidelines'') that reflect pollutant reductions that can be achieved by categories or subcategories of industrial point sources using technologies that represent the appropriate level of control. See CWA sections 301(b)(2), 304(b), 306, 307(b), and 307(c). For point sources that introduce pollutants directly into the waters of the United States (direct dischargers), the effluent limitations guidelines and standards promulgated by EPA are implemented through National Pollutant Discharge Elimination System (NPDES) permits. See CWA sections 301(a), 301(b), and 402. For sources that discharge to POTWs (indirect dischargers), EPA promulgates pretreatment standards that apply directly to those sources and are enforced by POTWs and State and Federal authorities. See CWA sections 307(b) and (c).

1. Best Practicable Control Technology Currently Available (BPT)— CWA Sections 301(b)(1)(A) & 304(b)(1)

EPA defines Best Practicable Control Technology Currently Available (BPT) effluent limitations for conventional, toxic, and non-conventional pollutants. Section 304(a)(4) designates the following as conventional pollutants: Biochemical oxygen demand (BOD_5), total suspended solids, fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501). EPA has identified 65 pollutants and classes of pollutants as toxic pollutants, of which 126 specific substances have been designated priority toxic pollutants. See Appendix A to part 423. All other pollutants are considered to be non-conventional.

In specifying BPT, EPA looks at a number of factors. EPA first considers the total cost of applying the control technology in relation to the effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed, and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the EPA Administrator deems appropriate. See CWA section 304(b)(1)(B). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes, or other common characteristics. Where existing performance is uniformly inadequate, BPT may reflect higher levels of control than currently in place in an industrial category if the Agency determines that the technology can be practically applied.

2. Best Conventional Pollutant Control Technology (BCT)—CWA Sections 301(b)(2)(E) & 304(b)(4)

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with Best Conventional Pollutant Control Technology (BCT) for discharges from existing industrial point sources. In addition to considering the other factors specified in section 304(b)(4)(B) to establish BCT limitations, EPA also considers a two part ''cost-reasonableness'' test. EPA explained its methodology for the development of BCT limitations in 1986. See 51 FR 24974 (July 9, 1986).

3. Best Available Technology Economically Achievable (BAT)—CWA Sections 301(b)(2)(A) & 304(b)(2)(B)

For toxic pollutants and non-conventional pollutants, EPA promulgates effluent guidelines based on the Best Available Technology Economically Achievable (BAT). See CWA section 301(b)(2)(A), (C), (D) and

(F). The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, non-water quality environmental impacts, including energy requirements, and other such factors as the EPA Administrator deems appropriate. See CWA section 304(b)(2)(B). The technology must also be economically achievable. See CWA section 301(b)(2)(A). The Agency retains considerable discretion in assigning the weight accorded to these factors. BAT limitations may be based on effluent reductions attainable through changes in a facility's processes and operations. Where existing performance is uniformly inadequate, BAT may reflect a higher level of performance than is currently being achieved within a particular subcategory based on technology transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

4. New Source Performance Standards (NSPS)—CWA Section 306

New Source Performance Standards (NSPS) reflect effluent reductions that are achievable based on the best available demonstrated control technology. New sources have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the best available demonstrated control technology for all pollutants (*i.e.,* conventional, non-conventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

5. Pretreatment Standards for Existing Sources (PSES)—CWA Section 307(b)

Pretreatment Standards for Existing Sources (PSES) are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly owned treatment works (POTWs), including sludge disposal methods at POTWs. Pretreatment standards for existing sources are technology-based and are analogous to BAT effluent limitations guidelines.

The General Pretreatment Regulations, which set forth the framework for the implementation of national pretreatment standards, are found at 40 CFR part 403.

6. Pretreatment Standards for New Sources (PSNS)—CWA Section 307(c)

Like PSES, Pretreatment Standards for New Sources (PSNS) are designed to prevent the discharges of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers have the opportunity to incorporate into their facilities the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

B. What Are EPA's Review and Planning Obligations Under Sections 301(d), 304(b), 304(g), 304(m), and 307(b)?

1. EPA's Review and Planning Obligations Under Sections 301(d), 304(b), and 304(m)—Direct Dischargers

Section 304(b) requires EPA to review its existing effluent guidelines for direct dischargers each year and to revise such regulations ''if appropriate.'' Section 304(m) supplements the core requirement of section 304(b) by requiring EPA to publish a plan every two years announcing its schedule for performing this annual review and its schedule for rulemaking for any effluent guidelines selected for possible revision as a result of that annual review. Section 304(m) also requires the plan to identify categories of sources discharging toxic or non-conventional pollutants for which EPA has not published effluent limitations guidelines under section 304(b)(2) or NSPS under section 306. See CWA section 304(m)(1)(B); S. Rep. No. 50, 99th Cong., 1st Sess. (1985); WQA87 Leg. Hist. 31 (indicating that section 304(m)(1)(B) applies to ''non-trivial discharges.''). Finally, under section 304(m), the plan must present a schedule for promulgating effluent guidelines for industrial categories for which it has not already established such guidelines, providing for final action on such rulemaking not later than three years after the industrial category is identified in a final Plan.[1] See CWA section 304(m)(1)(C). EPA is required to publish its preliminary Plan for public comment prior to taking final action on the plan. See CWA section 304(m)(2).

In addition, CWA section 301(d) requires EPA to review every five years the effluent limitations required by CWA section 301(b)(2) and to revise them if appropriate pursuant to the procedures specified in that section. Section 301(b)(2), in turn, requires point sources to achieve effluent limitations reflecting the application of the best practicable control technology (all pollutants), best available technology economically achievable (for toxic pollutants and non-conventional pollutants) and the best conventional pollutant control technology (for conventional pollutants), as determined by EPA under sections 304(b)(1), 304(b)(2) and 304(b)(4), respectively. For over three decades, EPA has implemented sections 301 and 304 through the promulgation of effluent limitations guidelines, resulting in regulations for 56 industrial categories. *See E.I. du Pont de Nemours & Co.* v. *Train,* 430 U.S. 113 (1977). Consequently, as part of its annual review of effluent limitations guidelines under section 304(b), EPA is also reviewing the effluent limitations they contain, thereby fulfilling its obligations under sections 301(d) and 304(b) simultaneously.

2. EPA's Review and Planning Obligations Under Sections 304(g) and 307(b)—Indirect Dischargers

Section 307(b) requires EPA to revise its pretreatment standards for indirect dischargers ''from time to time, as control technology, processes, operating methods, or other alternatives change.'' See CWA section 307(b)(2). Section 304(g) requires EPA to annually review these pretreatment standards and revise them ''if appropriate.'' Although section 307(b) only requires EPA to revise existing pretreatment standards ''from time to time,'' section 304(g) requires an annual review. Therefore, EPA meets its 304(g) and 307(b) requirements by reviewing all industrial categories subject to existing categorical pretreatment standards on an annual basis to identify potential candidates for revision.

Section 307(b)(1) also requires EPA to promulgate pretreatment standards for pollutants not susceptible to treatment by POTWs or that would interfere with the operation of POTWs, although it does not provide a timing requirement for the promulgation of such new pretreatment standards. EPA, in its discretion, periodically evaluates indirect dischargers not subject to categorical pretreatment standards to identify potential candidates for new

[1] EPA recognizes that one court—the U.S. District Court for the Central District of California—has found that EPA has a duty to *promulgate* effluent guidelines within three years for new categories identified in the Plan. *See NRDC et al.* v. *EPA*, 437 F.Supp.2d 1137 (C.D. Ca, 2006). However, EPA continues to believe that the mandatory duty under section 304(m)(1)(C) is limited to providing a *schedule* for taking final action in effluent guidelines rulemaking—not necessarily promulgating effluent guidelines—within three years, and has appealed this decision.

pretreatment standards. The CWA does not require EPA to publish its review of pretreatment standards or identification of potential new categories, although EPA is exercising its discretion to do so in this notice.

EPA intends to repeat this publication schedule for future pretreatment standards reviews (*e.g.*, EPA will publish the 2009 annual pretreatment standards review in the notice containing the Agency's 2009 annual review of existing effluent guidelines and the preliminary 2010 plan). EPA intends that these contemporaneous reviews will provide meaningful insight into EPA's effluent guidelines and pretreatment standards program decision-making. Additionally, by providing a single notice for these and future reviews, EPA hopes to provide a consolidated source of information for the Agency's current and future effluent guidelines and pretreatment standards program reviews.

V. EPA's 2008 Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), and 307(b)

A. What Process Did EPA Use To Review Existing Effluent Guidelines and Pretreatment Standards Under CWA Section 301(d), 304(b), 304(g), and 307(b)?

1. Overview

In its 2008 annual review, EPA reviewed all industrial categories subject to existing effluent limitations guidelines and pretreatment standards, representing a total of 56 point source categories and over 450 subcategories. EPA uses four factors in a phased approach to review existing effluent limitations guidelines and pretreatment standards: Pollutants discharged in an industrial category's discharge, current and potential pollution prevention and control technology options, category growth and economic considerations of technology options, and implementation and efficiency considerations of revising existing effluent guidelines or publishing new effluent guidelines (*see* December 21, 2006; 71 FR 76666). Examining these factors also helps the Agency to assess the extent to which additional regulation may contribute reasonable further progress toward the CWA's objective of restoring and maintaining the chemical, physical and biological integrity of the nation's waters, consistent with section 101 of the CWA.

EPA used this 2008 review to confirm the Agency's identification of industrial categories prioritized for further review in the preliminary 2008 Effluent Guidelines Program Plan (October 30, 2007; 72 FR 61335). EPA also continued work on four detailed studies as part of the 2008 annual review: Steam Electric Power Generating (Part 423), Coal Mining (Part 434), Oil and Gas Extraction (Part 435) (for the purpose of assessing whether to include coalbed methane extraction as a new subcategory), and Hospitals (Part 460).[2] These reviews discharged EPA's obligations to annually review both existing effluent limitations guidelines for direct dischargers and existing pretreatment standards for indirect dischargers under CWA sections 304(b) and (g), as well as other review requirements under CWA section 301(d) and 307(b).

Based on this review and prior annual reviews, and in light of the ongoing effluent guidelines rulemakings and detailed studies currently in progress, EPA is not identifying any existing categories for effluent guidelines rulemaking at this time, and is thus not establishing a schedule for further rulemaking at this time. EPA does, however, intend to continue its more focused detailed reviews in the 2009 and 2010 annual reviews of the effluent guidelines for the following categories: Steam Electric Power Generating (Part 423), Oil and Gas Extraction category (Part 435) (for the purpose of assessing whether to revise the limits to include Coalbed Methane extraction as a new subcategory), and Hospitals (Part 460) (which is part of the Health Services Industry detailed study). As part of its detailed study of the Coalbed Methane extraction industry, EPA is seeking approval from the Office of Management and Budget (OMB) for an Information Collection Request (ICR) to gather data from the industry (July 15, 2008; 73 FR 40575). EPA is also planning to submit a proposed ICR to OMB for the Health Services Industry; in particular, a study of unused pharmaceuticals from medical and veterinary facilities. This is a request for a new collection. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection (August 12, 2008; 73 FR 46903). See Sections V.B.2 and VII.D.

[2] Based on available information, hospitals consist mostly of indirect dischargers for which EPA has not established pretreatment standards. As discussed in Section VII.B, EPA is including hospitals in its review of the Health Services Industry, a potential new category for pretreatment standards. As part of that process, EPA will review the existing effluent guidelines for the few direct dischargers in the category.

2. How Did EPA's 2007 Annual Review Influence Its 2008 Annual Review of Point Source Categories With Existing Effluent Guidelines and Pretreatment Standards?

In view of the annual nature of its reviews of existing effluent guidelines and pretreatment standards, EPA believes that each annual review can and should influence succeeding annual reviews, *e.g.*, by indicating data gaps, identifying new pollutants or pollution reduction technologies, or otherwise highlighting industrial categories for additional scrutiny in subsequent years. During its 2007 annual review, which concluded in October 2007, EPA started or continued detailed studies of the existing effluent guidelines and pretreatment standards for the four industrial categories mentioned in the previous discussion: Steam Electric Power Generating (Part 423), Coal Mining (Part 434), Oil and Gas Extraction category (Part 435) (for the purpose of assessing whether to revise the limits to include Coalbed Methane extraction as a new subcategory), and Hospitals (Part 460) (which is part of the Health Services Industry detailed study). In addition, EPA used its 2007 annual reviews to identify three other industrial categories as candidates for further study in the 2008 reviews based on the toxic discharges reported to the Toxics Release Inventory (TRI) and Permit Compliance System (PCS): Ore Mining and Dressing (Part 440), Centralized Waste Treatment (Part 437), and Waste Combustors (Part 444). EPA published the findings from its 2007 annual review with its preliminary 2008 Plan (October 30, 2007; 72 FR 61335), making the pollutant discharge and industry profile data available for public comment. Docket No. EPA–HQ–OW–2006–0771. EPA used the findings, data and comments on the 2007 annual review to inform its 2008 annual review. The 2008 review also built on the previous reviews by incorporating some refinements to assigning discharges to categories and updating toxic weighting factors used to estimate the significance of toxic pollutant discharges. In its 2008 reviews, EPA completed its Coal Mining detailed study and the dental amalgam management detailed study for the Health Services Industry. As discussed below, EPA is not identifying these two industry sectors for an effluent guidelines rulemaking at this time. EPA does, however, intend to continue its more focused detailed reviews for the following categories and industry sectors in the next biennial planning cycle: Steam Electric Power Generating category, Oil and Gas Extraction

category (only to assess whether to revise the limits to include Coalbed Methane extraction as a new subcategory), and unused pharmaceutical management for the Health Services Industry (which includes the Hospital category).

3. What Actions Did EPA Take in Performing Its 2008 Annual Reviews of Existing Effluent Guidelines and Pretreatment Standards?

a. Screening-Level Review

The first component of EPA's 2008 annual review consisted of a screening-level review of all industrial categories subject to existing effluent guidelines or pretreatment standards. As a starting point for this review, EPA examined screening-level data from its 2007 annual reviews. In its 2007 annual reviews, EPA focused its efforts on collecting and analyzing data to identify industrial categories whose pollutant discharges potentially are the most significant. EPA primarily uses TRI and PCS data to estimate the mass of pollutant discharges from different industrial facilities. Because pollutant toxicities are different, EPA converted the toxic and non-conventional pollutant discharges that are reported in a mass unit (pounds) into a measure of relative toxicity (toxic-weighted pound equivalent or TWPE). EPA calculated the TWPE for each pollutant discharged by multiplying the pollutant specific toxic weighting factor (TWF) and the mass of the pollutant discharge. Where data are available, these TWFs reflect both aquatic life and human health effects. EPA ranked point source categories according to their discharges of toxic and non-conventional pollutants (reported in units of TWPE) to assess the significance of these toxic and non-conventional pollutant discharges to human health or the environment. EPA repeated this process for the 2008 annual reviews using the most recent TRI data (2005).

Next, EPA considered the availability of technologies to reduce pollutant discharges. EPA does not have, for all of the 56 existing industrial categories, information about the availability of treatment or process technologies to reduce pollutant wastewater discharges beyond the performance of the technologies upon which existing effluent guidelines and standards were developed. At present 46 states and one U.S. territory are authorized to administer the CWA NPDES program. Under the CWA, permitting authorities must include water-quality based effluent limits where the technology-based effluent limits are not sufficient to meet applicable water quality standards. Therefore, dischargers may have already installed technologies that reduce pollutant discharges to a level below the original technology-based requirements in order to meet such water-quality based effluent limitations.

A commenter on the preliminary 2008 Plan argued that EPA should conduct rulemaking to amend its effluent guidelines even where water quality-based controls have already controlled pollutant discharges (*see* EPA–HQ–OW–2006–0771–0847). EPA disagrees. Analyzing the significance of the remaining pollutant discharges is most useful for assessing the potential effectiveness of additional technologies because such an analysis focuses on the amount and significance of pollutant discharges that would actually be removed through new, technology-based nationally-applicable regulations for these categories. Where potential pollutant discharge reductions are not significant, there are likely few effective technology options for a technology-based rule. Once EPA determined which industries have the potential for significant additional pollutant removals, EPA further examined the availability of technologies for certain industries. For example, EPA identified technologies to minimize pollutant discharges from Steam Electric facilities (*see* Steam Electric Power Generating Point Source Category: 2007/2008 Detailed Study Report, EPA–821–R–08–011, DCN 05516).

EPA also considered whether there was a way to develop a suitable tool for comprehensively evaluating the availability and affordability of treatment or process technologies, but determined that there is not, because the universe of facilities is too broad and complex. EPA could not find a reasonable way to prioritize the industrial categories based on readily available engineering and economic data. In the past, EPA has gathered information regarding technologies and economic achievability for one industrial category at a time through detailed questionnaires distributed to hundreds of facilities within a category or subcategory for which EPA has commenced rulemaking. Such information-gathering is subject to the requirements of the Paperwork Reduction Act (PRA), 33 U.S.C. 3501, *et seq.* The information acquired in this way is valuable to EPA in its rulemaking efforts, but the process of gathering, validating and analyzing the data can consume considerable time and resources. To study one industry with this level of analysis generally takes 3 years at a cost to EPA of 1.5 to 3 million dollars. EPA does not think it is appropriate or feasible to conduct this level of analysis for all point source categories in conducting an annual review. Rather, EPA uses its analyses of existing pollutant discharges to identify the categories with the largest toxic weighted discharges. From this smaller list of categories, EPA evaluates the possibility of effective technologies and selects certain industries for examination (*e.g.*, Preliminary Category Reviews, Detailed Studies). In these more detailed reviews EPA evaluates technology options for better control of pollutant discharges and may conduct surveys or other data collection activities in order to better inform the decision on whether to initiate an effluent guidelines rulemaking. EPA solicits comment on how to develop tools for directly assessing technological and economic achievability in future annual reviews under section 301(d), 304(b), and 307(b) (*see* EPA–HQ–OW–2004–0032–2344). The full description of EPA's methodology for the 2008 review is presented in the Technical Support Document (TSD) for the final 2008 Plan (*see* DCN 05515).

EPA is continuously investigating and solicits comment on how to improve its analyses. EPA made a few such improvements to the review methodology from the 2007 to the 2008 annual review. As part of the 2008 review, EPA corrected the PCSLoads2004 and TRIReleases2004 databases, by addressing issues raised in comments (*e.g.*, updating TWFs and average POTW pollutant removal efficiencies for a number of pollutants) and collecting additional information from individual facilities that report to TRI or PCS.

EPA also continued to use the quality assurance project plan (QAPP) developed for the 2007 annual review to document the type and quality of data needed to make the decisions in this 2008 annual review and to describe the methods for collecting and assessing those data (*see* EPA–HQ–OW–2006–0771–0208). EPA performed quality assurance checks on the data used to develop estimates of toxic-weighted pollutant discharges (*i.e.*, verifying 2005 discharge data reported to TRI) to determine whether any of the pollutant discharge estimates relied on incorrect or suspect data. For example, EPA contacted facilities and permit writers to confirm and, as necessary, correct TRI data for facilities that EPA had identified in its screening-level review as the significant dischargers.

Based on this methodology, EPA assigned those industrial categories with the lowest estimates of toxic-weighted

pollutant discharges a lower priority for revision (*i.e.*, industrial categories marked ''(3)'' in the ''Findings'' column in Table V–1 in section V.B.4 of today's notice).

Because there are 56 point source categories (including over 450 subcategories) with existing effluent guidelines and pretreatment standards that must be reviewed annually, EPA believes it is important to prioritize its review so as to focus on industries where changes to the existing effluent guidelines or pretreatment standards are most likely to result in further pollutant discharge reduction. In general, industries for which effluent guidelines or pretreatment standards have recently been promulgated are less likely to warrant such changes. However, when EPA becomes aware of the growth of a new industrial activity within an existing category or where new concerns are identified for previously unevaluated pollutants discharged by facilities within an industrial category, EPA would apply more scrutiny to the category in a subsequent review. EPA identified no such instance during the 2008 annual review. In order to further focus its inquiry during the 2008 annual review, EPA assigned a lower priority for potential revision to categories for which effluent guidelines had been recently promulgated or revised, or for which effluent guidelines rulemaking was currently underway (*i.e.*, industrial categories marked ''(1)'' in the ''Findings'' column in Table V–1 in section V.B.4 of today's notice). EPA removed an industrial point source category from further consideration during the current review cycle if EPA established, revised, or reviewed in a rulemaking context the category's effluent guidelines after August 2001 (*i.e.*, seven years prior to August 2008, the expected publication of the final 2008 Effluent Guidelines Program). EPA chose seven years because this is the time it customarily takes for the effects of effluent guidelines or pretreatment standards to be fully reflected in pollutant loading data and TRI reports (in large part because effluent limitations guidelines are often incorporated into NPDES permits only upon re-issuance, which could be up to five years after the effluent guidelines or pretreatment standards are promulgated). EPA also applied a lower priority for potential revision at this time to the Ore Mining and Dressing category as EPA lacked sufficient data to determine whether revision would be appropriate (*i.e.*, this category is marked with ''(5)'' in the ''Findings'' column in Table V–1 in section V.B.4 of today's notice). EPA lacks sufficient information at this time on the magnitude of the toxic-weighted pollutant discharges associated with this category. EPA will seek additional information on the discharges from this category in the next annual review in order to determine whether a detailed study is warranted. EPA typically performs a further assessment of the pollutant discharges before starting a detailed study of an industrial category. This assessment (''preliminary category review'') provides an additional level of quality assurance on the reported pollutant discharges and number of facilities that represent the majority of toxic-weighted pollutant discharges. See the appropriate section in the TSD for the final 2008 Plan (*see* DCN 05515) for EPA's data needs for these industrial categories.

For industrial categories marked ''(4)'' in the ''Findings'' column in Table V–1 in section V.B.4 of today's notice, EPA had sufficient information on the toxic-weighted pollutant discharges associated with these categories to continue a detailed study of these industrial categories in the 2008 annual review. EPA intends to use the detailed study to obtain information on hazard, availability and cost of technology options, and other factors in order to determine if it would be appropriate to identify the category for possible effluent guidelines revision. EPA will continue three detailed studies in the 2009 annual review: Steam Electric Power Generating category, Oil and Gas Extraction category (only to assess whether to revise the limits to include Coalbed Methane extraction as a new subcategory), and unused pharmaceutical management for the Health Services Industry (which includes the Hospital category).

As part of its 2008 annual review, EPA also considered the number of facilities responsible for the majority of the estimated toxic-weighted pollutant discharges associated with an industrial activity. Where only a few facilities in a category accounted for the vast majority of toxic-weighted pollutant discharges (*i.e.*, categories marked ''(2)'' in the ''Findings'' column in Table V–1 in section V.B.4 of today's notice), EPA applied a lower priority for potential revision. EPA believes that revision of individual permits for such facilities may be more effective than a revised national effluent guidelines rulemaking. Individual permit requirements can be better tailored to these few facilities and may take considerably less time and resources to establish than a national effluent guidelines rulemaking. The Docket accompanying this notice lists facilities that account for the vast majority of the estimated toxic-weighted pollutant discharges for particular categories (*see* DCN 05515). For these facilities, EPA will consider identifying pollutant control and pollution prevention technologies that will assist permit writers in developing facility-specific, technology-based effluent limitations on a best professional judgment (BPJ) basis. For example, EPA developed and distributed a 2007 technical document to NPDES permit writers in order to support the development of effluent limitations for facilities in the dissolving kraft (Subpart A) and dissolving sulfite (Subpart D) subcategories of the pulp and paper point source category (40 CFR Part 430) (*see* EPA–HQ–OW–2006–0771–0774). In future annual reviews, EPA also intends to re-evaluate each category based on the information available at the time in order to evaluate the effectiveness of the BPJ permit-based support.

EPA received comments in previous biennial planning cycles urging the Agency to encourage and recognize voluntary efforts by industry to reduce pollutant discharges, especially when the voluntary efforts have been widely adopted within an industry and the associated pollutant reductions have been significant. EPA agrees that industrial categories demonstrating significant progress through voluntary efforts to reduce hazard to human health or the environment associated with their effluent discharges would be a comparatively lower priority for effluent guidelines or pretreatment standards revision, particularly where such reductions are achieved by a significant majority of individual facilities in the industry. Although during this annual review EPA could not complete a systematic review of voluntary pollutant loading reductions, EPA's review did indirectly account for the effects of successful voluntary programs because any significant reductions in pollutant discharges should be reflected in TRI 2005 discharge data, as well as any data provided directly by commenters, that EPA used to assess the toxic-weighted pollutant discharges.

In summary, EPA's review enables EPA to concentrate its resources on conducting more in-depth reviews of certain industries, as discussed below.

b. Further Review of Prioritized Categories

In the publication of the preliminary 2008 Plan, EPA identified three categories with potentially high TWPE discharge estimates for further investigation (''preliminary category

review'') as a result of the 2007 annual review: Ore Mining and Dressing (Part 440), Centralized Waste Treatment (Part 437), and Waste Combustors (Part 444) (*i.e.*, EPA identified these categories with ''(5)'' in the column entitled ''Findings'' in Table V–1, Page 61345 of the preliminary 2008 Plan). EPA reviewed these three categories in its 2008 annual review.

EPA typically performs a further assessment of the pollutant discharges before starting a detailed study of an industrial category. In conducting these preliminary category reviews, EPA used the same types of data sources used for the detailed studies but in less depth. This assessment provides confirmation of the reported pollutant discharges and number of facilities that represent the majority of toxic-weighted pollutant discharges. EPA may also develop a preliminary list of potential wastewater pollutant control technologies before conducting a detailed study.

c. Detailed Study of Four Categories

EPA continued detailed studies of four categories: Steam Electric Power Generating (Part 423), Coal Mining (Part 434), Oil and Gas Extraction (Part 435) (only to assess whether to include coalbed methane extraction as a new subcategory), and Hospitals (Part 460) (which is part of the Health Services Industry detailed study). For these industries, EPA gathered and analyzed additional data on pollutant discharges, economic factors, and technology issues. EPA examined: (1) Wastewater characteristics and pollutant sources; (2) the pollutants discharged from these sources and the toxic weights associated with these discharges; (3) treatment technology and pollution prevention information; (4) the geographic distribution of facilities in the industry; (5) any pollutant discharge trends within the industry; and (6) any relevant economic factors.

EPA relied on many different sources of data including: (1) The 2002 U.S. Economic Census; (2) TRI and PCS data; (3) contacts with reporting facilities to verify reported releases and facility categorization; (4) contacts with regulatory authorities (states and EPA regions) to understand how category facilities are permitted; (5) NPDES permits and their supporting fact sheets; (6) monitoring data included in facility applications for NPDES permit renewals (Form 2C data); (7) EPA effluent guidelines technical development documents; (8) relevant EPA preliminary data summaries or study reports; (9) technical literature on pollutant sources and control technologies; (10) information provided by industry including industry conducted survey and sampling data; (11) CWA section 308 data requests and surveys; and (12) stakeholder comments (*see* DCN 06109). Additionally, in order to evaluate available and affordable treatment technology options for the coalbed methane extraction industry sector, EPA is seeking approval from the Office of Management and Budget (OMB) for an Information Collection Request (ICR) to gather data from the industry (July 15, 2008; 73 FR 40757). EPA is also planning to submit a proposed ICR to OMB for the Health Services Industry; in particular, a study of unused pharmaceuticals from medical and veterinary facilities. This is a request for a new collection. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection (August 12, 2008; 73 FR 46903).

d. Public Comments

EPA's annual review process considers information provided by stakeholders regarding the need for new or revised effluent limitations guidelines and pretreatment standards. To that end, EPA established a docket at the time of publication of the final 2006 Plan to provide the public with an opportunity to submit additional information to assist the Agency in its 2007 and 2008 annual reviews. These public comments are in the supporting docket (EPA–HQ–OW–2006–0771, *www.regulations.gov*) and summarized in the TSD for the final 2008 Plan (*see* DCN 05515).

B. What Were EPA's Findings From Its 2008 Annual Review for Categories Subject to Existing Effluent Guidelines and Pretreatment Standards?

1. Screening-Level Review

In its 2008 screening level review, EPA considered significance of remaining pollutant discharges and the other factors described in section A.3.a. above in prioritizing effluent guidelines for potential revision. See Table V–1 in section V.B.4 of today's notice for a summary of EPA's findings with respect to each existing category; see also the TSD for the final 2008 Plan. Out of the categories subject only to the screening level review in 2008, EPA is not identifying any for effluent guidelines rulemaking at this time, based on the factors described in section A.3.a above and in light of the resources EPA is currently expending in effluent guidelines rulemakings and detailed studies. Specifically, EPA is engaged in rulemaking relating to the Construction and Development Point Source Category, the Airport De-icing Point Source Category; and the Concentrated Animal Feeding Operations Point Source Category.

2. Detailed Studies

In its 2008 annual review, EPA continued detailed studies of four industrial point source categories with existing effluent guidelines and pretreatment standards: Steam Electric Power Generating (Part 423), Coal Mining (Part 434), Oil and Gas Extraction (Part 435) (to assess whether to include coalbed methane extraction as a new subcategory), and Hospitals (Part 460) (which is part of the Health Services Industry detailed study). EPA is investigating whether the pollutant discharges reported to TRI and PCS for 2004 and 2005 accurately reflect the current discharges of the industry. EPA, through these detailed studies, analyzes the reported pollutant discharges, technology innovation, and process changes in these industrial categories. Additionally, EPA considers whether there are industrial activities not currently subject to effluent guidelines or pretreatment standards that should be included with these existing categories, either as part of existing subcategories or as potential new subcategories.

EPA completed the Coal Mining detailed study and the dental amalgam management detailed study for the Health Services Industry. As described below in more detail, EPA is not identifying either of these industries for an effluent guidelines rulemaking in this final 2008 Plan. EPA will continue the other detailed studies (*i.e.*, Steam Electric Power Generating, Coalbed Methane Extraction, and Health Services Industry (unused pharmaceutical management)) to determine whether EPA should identify in the future any of these industries for possible revision of their existing effluent guidelines and pretreatment standards. Three of these four industries are described below. EPA's review of hospitals (including dental amalgam and unused pharmaceuticals) is described in section VII.B (Health Services Industry detailed study).

a. Steam Electric Power Generating (Part 423)

The Steam Electric Power Generating effluent guidelines (40 CFR 423) apply to a subset of the electric power industry, namely those facilities ''primarily engaged in the generation of electricity for distribution and sale which results primarily from a process utilizing fossil-type fuel (coal, oil, or gas) or nuclear fuel in conjunction with

a thermal cycle employing the steam water system as the thermodynamic medium.'' See 40 CFR 423.10. EPA's most recent revisions to the effluent guidelines and standards for this category were promulgated in 1982 (*see* 47 FR 52290; November 19, 1982).

EPA has focused efforts for the 2007/2008 Detailed Study for the Steam Electric Power Generating point source category on certain discharges from coal-fired power plants. The study sought to: (1) characterize the mass and concentrations of pollutants in wastewater discharges from coal-fired steam electric facilities; and (2) identify the pollutants that comprise a significant portion of the category's TWPE discharge estimate and the corresponding industrial operation. EPA's previous annual reviews have indicated that the toxic-weighted loadings for this category are predominantly driven by the metals present in wastewater discharges, and that the waste streams contributing the majority of these metals are associated with ash handling and wet flue gas desulfurization (FGD) systems (*see* EPA–HQ–OW–2004–0032–2781). Other potential sources of metals include coal pile runoff, metal/chemical cleaning wastes, coal washing, and certain low volume wastes. EPA is continuing to collect data for the detailed study through facility inspections, wastewater sampling, a data request that was sent to a limited number of companies, and various secondary data sources (*see* Steam Electric Power Generating Point Source Category: 2007/2008 Detailed Study Report, EPA–821–R–08–011, DCN 05516).

EPA's data collection efforts are primarily focused on coal-fired power plants, with particular interest in FGD wastewater treatment, the management of ash sluice water, and water reuse opportunities. EPA's site visit program gathers information on the types of wastewaters generated by coal-fired steam electric power plants, as well as the methods of managing these wastewaters to allow for recycle, reuse, or discharge. EPA conducted site visits at 16 coal-fired power plants and is continuing to identify potential site visit candidates to assess FGD systems using different scrubber designs or sorbents, and facilities operating or planning to install different types of treatment and water reuse options.

Between July and October of 2007, EPA conducted five sampling episodes to characterize untreated wastewaters generated by coal-fired power plants, including FGD scrubber purge, fly ash sluice, bottom ash sluice, and combined fly- and bottom ash sluice. EPA also collected samples to assess the effluent quality from different types of treatment systems currently in place at these operations. Samples collected during the five episodes were analyzed for metals and other pollutants, such as total suspended solids and nitrogen. Site-specific sampling episode reports are in the docket for the 2008 Plan (EPA–HQ–OW–2006–0771, *www.regulations.gov*). These reports discuss the specific sample points and analytes, the sample collection methods used, the field quality control (QC) samples collected, and the analytical results for the wastewater samples.

EPA is continuing to identify potential sampling candidates to evaluate additional types of FGD wastewater treatment systems, including advanced biological metals removal processes and chemical precipitation systems. EPA plans to conduct wastewater sampling at one or more additional plants in 2008 or early 2009.

EPA also collected facility-specific information using a data request conducted under authority of CWA section 308 (*see* EPA–HQ–OW–2006–0771–0417). In May 2007, EPA distributed this data request to nine companies that operate a number of coal-fired power plants with wet FGD systems. The data request complements the wastewater sampling effort as it requested facility-specific information about wastewaters, and identifies management practices, for facilities not included in EPA's sampling program. Responses were received in August and October 2007 and characterized operations at 30 coal-fired power plants. EPA conducted technical reviews of the data received and resolved questions with the individual companies before entering the information into a database (*see* DCNs 05754 and 05755). The data request collected information on selected wastewater sources, air pollution controls, wastewater management and treatment practices, water reuse/recycle, and treatment system capital and operating costs.

The Utility Water Act Group (UWAG) provided EPA with a database that contains selected NPDES Form 2C data for 86 coal-fired plants operated by UWAG's member companies, namely those plants that operate wet FGD systems or wet fly ash sluice systems. The database provides facility information, data on facility outfalls, process flow diagrams, wastewater treatment information, and intake and effluent characteristics. Data are provided for the FGD, ash sluice, and coal pile runoff wastestreams.

EPA is also in the process of contacting vendors and conducting literature searches to collect additional information on wastewater treatment technology options and wastewater reuse opportunities for particular waste streams. The Electric Power Research Institute (EPRI) is conducting bench- and pilot-scale tests on FGD wastewater treatment technologies, including chemical precipitation, ion exchange, and biological metals removal.

EPA intends to continue its detailed review of the Steam Electric Power Generating point source category in the 2009 and 2010 annual reviews of effluent guidelines. Wastewater sampling at a facility operating a treatment system of interest was delayed by nearly one year due to operational conditions at the plant. In addition, several other plants recently began operating a new generation of FGD wastewater treatment technology that may achieve substantially better pollutant reductions of metals and nutrients than EPA has evaluated to date. EPA believes it is important to evaluate the performance of these technologies, as well as the processes being investigated by EPRI, prior to concluding the detailed study. As noted above, EPA has not yet completed its wastewater sampling activities. The UWAG Form 2C database was recently delivered to EPA; however, EPA has not had sufficient time to fully evaluate this data. The database provides substantial information on wastewater generation and wastewater management and treatment practices for a large number of plants. EPA believes it is important to take additional time to evaluate the Form 2C data, in concert with EPA's sampling data and the responses to EPA's data request. EPA also intends to continue investigating water reuse opportunities to assess the degree to which they may yield pollutant reductions for discharges of ash sluice and FGD wastewater.

b. Coal Mining (Part 434)

As discussed in the final 2006 Plan and preliminary 2008 Plan, EPA conducted a detailed study during the 2007 and 2008 annual reviews to evaluate the merits of comments received from a public interest group and from states and industry urging revisions to pollutant limitations in the Coal Mining effluent guidelines (40 CFR Part 434) (*see* December 21, 2006; 71 FR 76644–76667, and October 30, 2007; 72 FR 61342–61343).

The public interest group, the Environmental Law and Policy Center, asked EPA to place more stringent controls on Total Dissolved Solids

(TDS) (*e.g.*, sulfates and chlorides), mercury, cadmium, manganese, and selenium in coal mining discharges. They referenced a study by EPA Region 5 on potential adverse impacts of the discharge of sulfates on aquatic life (*see* EPA–HQ–OW–2004–0032–2614 through 2617).

The Interstate Mining Compact Commission, which represents mining regulatory agencies in 28 states, state mine permitting agencies in Pennsylvania and Virginia, and a few mining companies, asked EPA to remove the current manganese limitations. *They made the following requests and assertions*: (1) Permittees should be allowed to employ best management practices as necessary to reduce manganese discharges based on the water quality of receiving waterbodies; (2) manganese treatment is unnecessary to protect aquatic life and there are no widespread toxicity problems from discharges of manganese; (3) manganese treatment doubles or triples overall treatment costs resulting in the forfeiture of Surface Mining Control and Reclamation Act (SMCRA) bonds; (4) EPA should reconsider its rationale for setting manganese limits to ensure surrogate removal of other metals because data show that other metals occur only in low concentrations; (5) manganese treatment sometimes results in environmental harm because mining operators must add excessive chemicals to meet the discharge limits; and (6) because manganese limits are overly stringent they discourage the use of passive treatment technologies which are more environmentally beneficial than active treatment.

Individual state and industry commenters cited the following factors in support of their comments: (1) More stringent state-imposed coal mining reclamation bonding requirements, enacted after the promulgation of SMCRA, to control water discharges from mines undergoing reclamation; (2) studies supporting their contention that manganese is not harmful to aquatic life at levels above the current effluent limits; and (3) perception that active treatment with chemical additions may complicate permit compliance and may cause environmental harm.

EPA initiated the Coal Mining Detailed Study in January 2007. The study is consistent with the framework presented in the Detailed Study Plan, a draft of which the Agency placed into the docket (*see* EPA–HQ–OW–2004–0032–2312) during the fall of 2006. EPA revised and finalized the Detailed Study Plan in April 2007 to reflect public comments. The study evaluated treatment technologies, costs, and pollutant discharge loads, as well as the effects of manganese and other pollutants on aquatic life. The study also addressed the question of whether bonds are being forfeited because of the cost of manganese treatment by examining bonding and trust fund requirements, past bond forfeiture rates, future potential bond forfeiture rates, and the issues related to state assumption of long-term water treatment responsibilities for mines where the bonds have been forfeited.

As outlined in the Detailed Study Plan, EPA framed study questions based on public comment, identified data sources to help answer the study questions, developed a methodology for estimating treatment costs and discharge loads, and initiated data collection activities with the Interstate Mining Compact Commission, state agencies, and the Office of Surface Mining, Reclamation, and Enforcement within the U.S. Department of the Interior. In responding to these public comments the study used Part 434 definitions to describe the industry. In particular, proper understanding of the following terms is useful in understanding the following discussion and EPA's response to the public commenters:

- The term ''acid or ferruginous mine drainage'' means mine drainage which, before any treatment, either has a pH of less than 6.0 or a total iron concentration equal to or greater than 10 mg/l (*see* 40 CFR 434.11(a)).
- The term ''active mining area'' means the area, on and beneath land, used or disturbed in activity related to the extraction, removal, or recovery of coal from its natural deposits. This term excludes coal preparation plants, coal preparation plant associated areas and post-mining areas (*see* 40 CFR 434.11(b)).
- The term ''alkaline mine drainage'' means mine drainage which, before any treatment, has a pH equal to or greater than 6.0 and total iron concentration of less than 10 mg/l (*see* 40 CFR 434.11(c)).
- The term ''bond release'' means the time at which the appropriate regulatory authority returns a reclamation or performance bond based upon its determination that reclamation work (including, in the case of underground mines, mine sealing and abandonment procedures) has been satisfactorily completed (*see* 40 CFR 434.11(d)).
- The term ''post-mining area'' means: (1) A reclamation area or (2) the underground workings of an underground coal mine after the extraction, removal, or recovery of coal from its natural deposit has ceased and prior to bond release (*see* 40 CFR 434.11(k)).
- The term ''reclamation area'' means the surface area of a coal mine which has been returned to required contour and on which re-vegetation (specifically, seeding or planting) work has commenced (*see* 40 CFR 434.11(l)).

The study also notes that EPA has promulgated manganese effluent guidelines only for a subset of coal mining operations at Part 434: (1) Active surface and underground mining areas with acid mine drainage discharges (*see* Subpart C—Acid or Ferruginous Mine Drainage); and (2) post-mining areas with underground acid mine drainage discharges (*see* Subpart E—Post Mining Areas). Finally, as part of this study EPA identified the technology basis from prior Coal Mining effluent guidelines rulemakings that supported the promulgation of manganese effluent guidelines (''chemical precipitation and settling'') and reviewed the current application of this technology.

EPA also reviewed scientific literature and conducted interviews with state regulatory personnel in order to assess comments concerning the toxic effects of manganese and whether coal mining discharges of other pollutants are of concern. EPA's review found that manganese discharges to surface water may have widely varying effects depending on water chemistry, and that manganese impacts are not well understood. Different aquatic species have a wide range of tolerance limits (*see* DCN 05517). The toxic effects of manganese are chronic rather than acute. Manganese may cause long-term population declines through reduced fertility and survivability. Headwaters areas, where most Appalachian coal mining has occurred and will continue to occur, are especially sensitive to manganese toxicity.

EPA clarified States' comments regarding the costs of EPA's coal mining manganese effluent guidelines. In their initial public comments, State commenters did not distinguish the costs of manganese removal among the three phases of coal mining: Active mining areas, post-mining areas, and post-bond release areas. This is important as EPA's manganese effluent guidelines only apply to a subset of coal mining areas. As documented in EPA's meetings and site visits, States indicated that they are most concerned about the cost of manganese treatment at *surface* post-mining areas where bonds cannot be released because water discharges exceed permit limits (*see* DCN 05517). States expressed a concern that operators at such mines may default rather than renew their bonds as required every five years. States indicated that reduced manganese

treatment costs at such mines can decrease the number of potential bond forfeitures. However, EPA is not able to address this issue through revisions to the Coal Mining effluent guideline because there are no manganese effluent guidelines for *surface* post-mining areas. EPA's review of State data indicates that these manganese effluent limits are derived from State manganese water-quality standards or site specific best professional judgment (BPJ) technology-based effluent limits. There are manganese effluent guidelines for post-mining areas with *underground* acid mine drainage discharges. As discussed below, EPA is not reopening those existing effluent guidelines applicable to underground acid mine drainage because the record continues to indicate that these existing guidelines are appropriate for these discharges.

EPA reviewed the Technical Development Documents supporting the Coal Mining effluent guidelines and did not identify any discussion regarding promulgating manganese effluent guidelines to ensure surrogate removal of other metals (*see* DCN 06117). EPA's review of these documents showed that EPA's rationale for requiring manganese control for a subset of coal mines was to address drinking water organoleptic effects. Additionally, EPA found no evidence to support state and industry comments that over-dosages or spills of treatment chemicals have caused fish kills and other significant stream damage.

EPA reviewed the cost and performance of passive treatment systems and concluded that they are less expensive than active treatment systems, but their effectiveness is generally limited to removal of manganese from alkaline discharges. As noted above, there are no manganese Coal Mining effluent guidelines for alkaline discharges for all three phases of coal mining. As for surface post-mining areas, EPA's review of State data indicates that manganese effluent limits for alkaline discharges are derived from State manganese water-quality standards or site specific BPJ technology-based effluent limits.

In conducting its study EPA also reviewed the costs of manganese treatment, which coal mining companies use to comply with manganese effluent limits derived from State manganese water-quality standards or site-specific BPJ technology-based effluent limits. Based on information received from the States of Pennsylvania and West Virginia, EPA concluded that only a small percentage of coal mine bond forfeitures are due to the cost of manganese treatment (*see* DCN 05517).

Overall, EPA found that there is little potential for future forfeiture of bonds on SMCRA permits that have been granted during the past five years or will be granted in the future. EPA's analysis indicates that forfeitures are largely a legacy of the first decade of SMCRA implementation during the 1980s and early 1990s. In particular, SMCRA requires an analysis of Probable Hydrologic Consequence (PHC) prior to approval of the SMCRA permit approval in order to identify regional hydrologic impacts associated with the coal mining and reclamation operation. The PHC is a determination of baseline ground water and surface water quality and quantity conditions and the impact the proposed mining will have on these baseline conditions. When potential adverse impacts are identified (*e.g.*, acid mine drainage (AMD)) through use of the PHC, appropriate protection, mitigation, and rehabilitation plans are developed and included in mining and reclamation permit requirements or if the potential adverse impacts cannot be sufficiently mitigated the SMCRA permit may be denied. The ultimate goal of using the PHC in the SMCRA permit review is to prevent acid mine drainage (AMD) after land reclamation is complete and the SMCRA bond is released. PHC analytical techniques were not sophisticated enough during the 1980s to adequately predict AMD and this lack of accuracy led to inadequate controls on AMD. Science supporting the PHC analysis has subsequently improved to the point where the Pennsylvania Department of Environmental Protection anticipates that less than 1 percent of recently SMCRA permitted mines will develop AMD after reclamation and bond release.

In response to comments from the Environmental Law and Policy Center, which asked EPA to place more stringent controls on manganese, TDS, selenium, mercury, and cadmium in coal mining discharges, EPA conducted a literature review regarding these pollutants in coal mining discharges. In particular, EPA reviewed recently initiated, long-term studies of coal mining discharges of TDS, being conducted by EPA Region 3 and Office of Research and Development (*see* DCN 06110).

EPA is not identifying its existing effluent guidelines for the Coal Mining point source category (Part 434) for an effluent guidelines rulemaking at this time. In response to State and industry comments, EPA's review indicated that manganese removal does double or triple treatment costs, but for active surface and underground mining areas with acid mine drainage discharges (regulated by Subpart C) and post-mining areas with underground acid mine drainage discharges (regulated by Subpart E) manganese treatment technology is available, economically achievable, and compliance rates with permit limits derived from the management effluent guidelines are high (*see* DCN 05517). In response to comments from the Environmental Law and Policy Center, EPA did not have sufficient information at this time to identify this category for an effluent guidelines rulemaking to regulate these pollutants. Additionally, commenters did not provide any such data for this annual review. As with all categories subject to existing effluent guidelines, EPA will continue to examine the effluent guidelines for this industrial category in future annual reviews to determine if revision may be appropriate.

c. Oil and Gas Extraction (Part 435)

EPA identified the coalbed methane (CBM) sector as a candidate for a detailed study in the final 2006 Effluent Guidelines Program Plan (71 FR 76656; December 21, 2006). As part of that announcement EPA made it clear that it would conduct data collection through an information collection request (ICR) to support this detailed study. In accordance with the Paperwork Reduction Act (PRA) EPA must seek Office of Management and Budget (OMB) approval for an ICR. EPA also provided notice of this ICR in the preliminary 2008 Plan (72 FR 61343; October 30, 2007) and in two separate **Federal Register** notices (January 25, 2008; 73 FR 4556 and July 15, 2008; 73 FR 40757). EPA is conducting this detailed study and data collection to determine whether it would be appropriate to initiate an effluent guidelines rulemaking to control pollutants discharged in coalbed methane (CBM) produced water.

CBM extraction requires removal of large amounts of water from underground coal seams before CBM can be released. CBM wells have a distinctive production history characterized by an early stage when large amounts of water are produced to reduce reservoir pressure which in turn encourages release of gas. This is followed by a stable stage when quantities of produced gas increase as the quantities of produced water decrease; and a late stage when the amount of gas produced declines and water production remains low (*see* EPA–HQ–OW–2004–0032–1904). The

quantity and quality of water that is produced in association with CBM development varies from basin to basin, within a particular basin, from coal seam to coal seam, and over the lifetime of a CBM well.

Pollutants often found in these wastewaters include chloride, sodium, sulfate, bicarbonate, fluoride, iron, barium, magnesium, ammonia, and arsenic. Total dissolved solids (TDS) and electrical conductivity (EC) are bulk parameters that States typically use for quantifying and controlling the amount of pollutants in CBM produced waters.

Controlling the sodicity of the CBM produced waters is equally important in preventing environmental damage. Sodicity is often quantified as the sodium adsorption ratio (SAR), which is expressed as the ratio of sodium ions to calcium and magnesium ions. Sodicity is an important factor in controlling the produced water's suitability for irrigation as sodic soils are subject to severe structural degradation and restrict plant performance through poor soil-water and soil-air relations. All of these dissolved inorganic parameters can potentially affect environmental impacts as well as potential beneficial uses of CBM produced water.

Impacts to surface water from discharges of CBM produced waters can be severe depending upon the quality of the CBM produced waters. These discharges have variable effects depending on the biology of the receiving stream. Some waterbodies and watersheds may be able to absorb the discharged water while others are sensitive to CBM produced water discharges. For example, large lakes or rivers with sufficient dilution capacity or marine waters are less sensitive to saline discharges than smaller receiving water bodies. Discharge of these CBM produced waters may also cause erosion and in some cases irreversible soil damage from elevated TDS concentrations and SAR values. This may limit future agricultural and livestock uses of the water and watershed.

Currently, regulatory controls for CBM produced waters vary from State to State and permit to permit (*see* EPA–HQ–OW–2004–0032–2782, 2540). There is very limited permit information (*e.g.*, effluent limits, restrictions) in PCS and TRI for this industrial sector. Consequently, EPA is gathering additional information from State NPDES permit programs and industry on the current regulatory controls across the different CBM basins.

Coalbed methane (CBM) extraction activities accounted for about 10 percent of the total U.S. natural gas production in 2006 and are expanding in multiple basins across the U.S. Currently, the Department of Energy's Energy Information Administration (EIA) expects CBM production to remain an important source of domestic natural gas over the next few decades.

As discussed in section A.1, EPA's review of existing effluent guidelines considers four factors: pollutants discharged in an industrial category's effluent, current and potential pollution prevention and control technology options, category growth and economic considerations of technology options, and implementation and efficiency considerations of revising existing effluent guidelines or publishing new effluent guidelines. EPA will use the CBM ICR to collect technical and economic information from a wide range of CBM operations to address these factors in greater detail (*e.g.*, geographical and geologic differences in the characteristics of CBM produced waters, environmental data, current regulatory controls, availability and affordability of treatment technology options). Response to EPA's questionnaire is mandatory for recipients and EPA will administer the questionnaire using its authority under Section 308 of the CWA, 33 U.S.C. 1318.

In 2007 and 2008, EPA worked with a range of stakeholders (*e.g.*, industry representatives; Federal, State, and Tribal representatives; public interest groups and landowners; and water treatment experts) to obtain information on the industry and its CBM produced water management practices. EPA's outreach started with teleconferences and then continued with a series of meetings and site visits in the major CBM basins. In total, EPA contacted over 700 people in eight states during more than 60 outreach and data collection activities in 2007 and 2008 (*e.g.*, meetings, teleconferences, site visits) (*see* EPA–HQ–OW–2006–0771–0977 and 1124). EPA also solicited public comment through two separate **Federal Register** notices on the draft survey and supporting statement (January 25, 2008; 73 FR 4556 and July 15, 2008; 73 FR 40757). This outreach helped the development of the ICR as EPA incorporated data, comments, and suggestions from industry and other stakeholders into the questionnaire. EPA intends to distribute the two-phased questionnaire to industry following OMB approval (*see* Section 5(d) of the ICR's Supporting Statement, Part A, EPA–HQ–OW–2006–0771–1119). EPA will process the survey data it collects and plans to present preliminary results on available and affordable technology options in the preliminary 2010 Plan.

3. Results of Further Review of Prioritized Categories

During the 2007 annual review, EPA identified three categories with potentially high TWPE discharge estimates (*i.e.*, industrial point source categories with existing effluent guidelines identified with ''(5)'' in the column entitled ''Findings'' in Table V–1, Page 61345 of the preliminary 2008 Plan). During the 2008 annual review EPA continued to collect and analyze information on these three industrial categories: Ore Mining and Dressing (Part 440), Centralized Waste Treatment (Part 437), and Waste Combustors (Part 444). EPA is not identifying any of these three categories for an effluent guidelines rulemaking in this final 2008 Plan (*see* Sections 6, 8, and 11 of DCN 05515). EPA concluded its preliminary category review of the Centralized Waste Treatment and Waste Combustors categories in the 2008 annual review and has determined that these categories are no longer among those industrial categories, currently regulated by existing effluent guidelines, that cumulatively comprise 95% of the reported discharges (reported in units of toxic-weighted pound equivalent or TWPE) (*see* DCN 05515). Since these two are not among the list of industry categories that cumulatively comprise 95% of the reported discharges, EPA has identified these two categories as low priorities for effluent guideline revisions at this time. EPA will maintain its preliminary category review for the Ore Mining and Dressing category in the 2009 annual review (*i.e.*, this category is marked with ''(5)'' in the ''Findings'' column in Table V–1 in section V.B.4 of today's notice). The docket accompanying this notice presents a summary of EPA's findings on these three industrial categories (*see* DCN 05515).

For the Ore Mining and Dressing category (Part 440), EPA lacks sufficient information at this time on the magnitude of the toxic-weighted pollutant discharges. EPA will seek additional information on the discharges from this category in the next annual review in order to determine whether a detailed study is warranted. EPA typically performs a further assessment of the pollutant discharges before starting a detailed study of an industrial category. This assessment provides an additional level of quality assurance on the reported pollutant discharges and number of facilities that represent the majority of toxic-weighted pollutant discharges. EPA may also

develop a preliminary list of potential wastewater pollutant control technologies before conducting a detailed study. See the appropriate section in the TSD for the final 2008 Plan (*see* DCN 05515) for EPA's data needs for these industrial categories.

For the Waste Combustors category (Part 444), EPA used information from TRI and PCS databases, as well as facility contacts, in its preliminary category review. TRI-reported discharges of pesticides accounted for the vast majority of the Waste Combustors category's TWPE identified in the 2008 preliminary plan. EPA contacted six waste combustor facilities to collect information on pesticides and received confirmation that pesticides were not detected in combustor wastewaters. Specifically, EPA determined that the TRI-reported pesticide releases from waste combustor facilities are generally estimated using characterization reports from clients and treatment efficiency data, rather than actual sampling data. Chapter 11 of the 2008 Technical Support Document for this Plan presents more details on EPA's findings on the Waste Combustors category (*see* DCN 05515). Based on this review EPA is not identifying this category for an effluent guidelines rulemaking at this time.

For the Centralized Waste Treatment category (Part 437), EPA also used information from TRI and PCS databases, as well as facility contacts, in its preliminary category review. TRI-reported discharges of pesticides accounted for the vast majority of the Centralized Waste Treatment category's TWPE identified in the 2008 preliminary plan. EPA contacted five Centralized Waste Treatment facilities to collect information on pesticides and received confirmation that pesticides were not detected in four of the five facility wastewaters. Specifically, EPA determined that the TRI-reported pesticide releases from centralized waste treatment facilities are generally estimated using characterization reports from clients and treatment efficiency data, rather than actual sampling data. Only one of the five Centralized Waste Treatment facilities contacted detected pesticides; however, the amount reported to TRI was greater than the amount actually measured. This error will be corrected in future TRI reports from the facility. Chapter 6 of the 2008 Technical Support Document for this Plan presents more details on EPA's findings on the Centralized Waste Treatment Category (*see* DCN 05515). Based on this review EPA is not identifying this category for an effluent guidelines rulemaking at this time.

4. Summary of 2008 Annual Review Findings

EPA reviewed all categories subject to existing effluent guidelines and pretreatment standards in order to identify appropriate candidates for revision. Based on this review, and in light of effluent guidelines rulemakings and detailed studies currently in progress, EPA is not identifying any existing categories for effluent guidelines rulemaking. EPA is, however, conducting detailed studies for three existing categories: Steam Electric Power Generating category, Oil and Gas Extraction category (only to assess whether to revise the limits to include Coalbed Methane extraction as a new subcategory), and unused pharmaceutical management for the Health Services Industry (which includes the Hospital category).

A summary of the findings of the 2008 annual review is presented below in Table V–1. This table uses the following codes to describe the Agency's findings with respect to each existing industrial category.

(1) Effluent guidelines or pretreatment standards for this industrial category were recently revised or reviewed through an effluent guidelines rulemaking, or a rulemaking is currently underway.

(2) Revising the national effluent guidelines or pretreatment standards is not the best tool for this industrial category because most of the toxic and non-conventional pollutant discharges are from one or a few facilities in this industrial category. EPA will consider assisting permitting authorities in identifying pollutant control and pollution prevention technologies for the development of technology-based effluent limitations by best professional judgment (BPJ) on a facility-specific basis.

(3) Not identified as a priority based on data available at this time (*e.g.,* not among industries that cumulatively comprise 95% of discharges as measured in units of TWPE).

(4) EPA intends to continue a detailed study of this industry in its 2009 annual review to determine whether to identify the category for effluent guidelines rulemaking.

(5) EPA is continuing or initiating a preliminary category review because incomplete data are available to determine whether to conduct a detailed study or identify for possible revision. EPA typically performs a further assessment of the pollutant discharges before starting a detailed study of the industrial category. This assessment provides an additional level of quality assurance on the reported pollutant discharges and number of facilities that represent the majority of toxic-weighted pollutant discharges. EPA may also develop a preliminary list of potential wastewater pollutant control technologies before conducting a detailed study. See the appropriate section in the TSD (*see* DCN 05515) for EPA's data needs for industries with this Finding (5).

TABLE V–1—FINDINGS FROM THE 2008 ANNUAL REVIEW OF EFFLUENT GUIDELINES AND PRETREATMENT STANDARDS CONDUCTED UNDER SECTION 301(D), 304(B), 304(G), AND 307(B)

No.	Industry category (listed alphabetically)	40 CFR part	Findings*
1	Aluminum Forming	467	(3)
2	Asbestos Manufacturing	427	(3)
3	Battery Manufacturing	461	(3)
4	Canned and Preserved Fruits and Vegetable Processing	407	(3)
5	Canned and Preserved Seafood Processing	408	(3)
6	Carbon Black Manufacturing	458	(3)
7	Cement Manufacturing	411	(3)
8	Centralized Waste Treatment	437	(3)
9	Coal Mining	434	(3)

[3] Based on available information, hospitals consist mostly of indirect dischargers for which EPA has not established pretreatment standards. As discussed in section VII.D, EPA is including hospitals in its review of the health Services Industry, a potential new category for pretreatment standards. As part of that process, EPA will review the existing effluent guidelines for the few direct dischargers in the category.

TABLE V–1—FINDINGS FROM THE 2008 ANNUAL REVIEW OF EFFLUENT GUIDELINES AND PRETREATMENT STANDARDS CONDUCTED UNDER SECTION 301(D), 304(B), 304(G), AND 307(B)—Continued

No.	Industry category (listed alphabetically)	40 CFR part	Findings*
10	Coil Coating	465	(3)
11	Concentrated Animal Feeding Operations (CAFO)	412	(1)
12	Concentrated Aquatic Animal Production	451	(1)
13	Copper Forming	468	(3)
14	Dairy Products Processing	405	(3)
15	Electrical and Electronic Components	469	(3)
16	Electroplating	413	(1)
17	Explosives Manufacturing	457	(3)
18	Ferroalloy Manufacturing	424	(3)
19	Fertilizer Manufacturing	418	(3)
20	Glass Manufacturing	426	(3)
21	Grain Mills	406	(3)
22	Gum and Wood Chemicals	454	(3)
23	Hospitals [3]	460	(4)
24	Ink Formulating	447	(3)
25	Inorganic Chemicals‡	415	(1) and (3)
26	Iron and Steel Manufacturing	420	(1)
27	Landfills	445	(3)
28	Leather Tanning and Finishing	425	(3)
29	Meat and Poultry Products	432	(1)
30	Metal Finishing	433	(1)
31	Metal Molding and Casting	464	(3)
32	Metal Products and Machinery	438	(1)
33	Mineral Mining and Processing	436	(3)
34	Nonferrous Metals Forming and Metal Powders	471	(3)
35	Nonferrous Metals Manufacturing	421	(3)
36	Oil and Gas Extraction	435	(4)
37	Ore Mining and Dressing	440	(5)
38	Organic Chemicals, Plastics, and Synthetic Fibers‡	414	(1) and (3)
39	Paint Formulating	446	(3)
40	Paving and Roofing Materials (Tars and Asphalt)	443	(3)
41	Pesticide Chemicals	455	(3)
42	Petroleum Refining	419	(3)
43	Pharmaceutical Manufacturing	439	(3)
44	Phosphate Manufacturing	422	(3)
45	Photographic	459	(3)
46	Plastic Molding and Forming	463	(3)
47	Porcelain Enameling	466	(3)
48	Pulp, Paper, and Paperboard	430	(3)
49	Rubber Manufacturing	428	(3)
50	Soaps and Detergents Manufacturing	417	(3)
51	Steam Electric Power Generating	423	(4)
52	Sugar Processing	409	(3)
53	Textile Mills	410	(3)
54	Timber Products Processing	429	(3)
55	Transportation Equipment Cleaning	442	(3)
56	Waste Combustors	444	(3)

* **Note:** The descriptions of the ''Findings'' codes are presented immediately prior to this table.

‡ **Note:** Two codes (''(1)'' and ''(3)'') are used for this category as both codes are applicable to this category and do not overlap. The first code (''(1)'') refers to the on-going effluent guidelines rulemaking for the Chlorinated Hydrocarbon (CCH) manufacturing sector, which includes facilities currently regulated by the OCSPF and Inorganics effluent guidelines. The second code (''(3)'') indicates that the discharges from the remaining facilities in these two categories do not represent priorities at this time.

VI. EPA's 2009 Review of Existing Effluent Guidelines and Pretreatment Standards Under CWA Sections 301(d), 304(b), 304(g), and 307(b)

As discussed in section V and further in section VIII, EPA is coordinating its annual and periodic reviews of existing effluent guidelines and pretreatment standards under CWA sections 301(d), 304(b), 307(b) and 304(g) with the publication of preliminary Plans and biennial Plans under section 304(m). Public comments received on EPA's prior reviews and Plans helped the Agency prioritize its analysis of existing effluent guidelines and pretreatment standards during the 2008 review. The information gathered during the 2008 annual review, including the identification of data gaps in the analysis of certain categories with existing regulations, in turn, provides a starting point for EPA's 2009 annual review. See Table V–1 above. In 2009, EPA intends to again conduct a screening-level analysis of all 56 categories and compare the results against those from previous years. EPA will also conduct more detailed analyses of those industries that rank high in terms of the significance of their toxic and non-conventional discharges among all point source categories. Additionally, EPA intends to continue its detailed studies of the following categories: Steam Electric Power Generating category, Oil and Gas Extraction category (only to assess whether to revise the limits to include

Coalbed Methane extraction as a new subcategory), and unused pharmaceutical management for the Health Services Industry (which includes the Hospital category). EPA is identifying the Ore Mining and Dressing category for a preliminary category review in the 2009 annual review. EPA invites comment and data on the three detailed studies, the preliminary category review, and all remaining point source categories.

As part of the 2009 annual review EPA is also taking the opportunity to solicit information on industrial sectors that use water efficiency practices that promote water efficiency, re-use, or recycling. EPA is seeking this information to inform its evaluation of technology options across multiple industrial sectors.

Water efficiency practices can reduce the amount of pollutants discharged by industrial facilities, especially for those facilities that have on-site wastewater treatment systems, but also for those without them. EPA's effluent guidelines rulemakings and reviews have documented numerous examples of industrial facilities employing water conservation as a means to meet effluent limitations based on promulgated effluent guidelines (*see* documents listed in Section 12.1 of EPA–HQ–OW–2004–0032–2783.1).

In addition, reducing water use will also reduce associated costs (and energy requirements) for industry. As significant users of water, industry is becoming aware of the importance of measuring, managing, and controlling water use. Water scarcity can limit industrial growth and many industrial sectors have substantially increased water re-use in the past 15 years, through reclaiming industrial wastewater for non-potable applications (where reclaimed industrial wastewater is used for non-potable applications). Moreover, the cost savings of implementing water re-use and reduction technologies and pollution prevention practices can be significant, with payback periods often measured within a few months or years.

In addition, this data solicitation will also help implement EPA's National Water Program strategy for responding to climate change (*see* DCN 06114). The National Water Program is developing a draft strategy to identify potential impacts of climate change for clean water and drinking water programs and define actions to respond to these impacts (*see* Key Action #5 in DCN 06115). A March 28, 2008, memorandum signed by the Assistant Administrator for Water requests comments on the draft strategy (*see* DCN 06116). Section IX solicits specific information on industrial sectors and facilities that use model water efficiency practices that promote water efficiency, re-use, or recycling.

VII. EPA's Evaluation of Categories of Indirect Dischargers Without Categorical Pretreatment Standards To Identify Potential New Categories for Pretreatment Standards

A. EPA's Evaluation of Pass Through and Interference of Toxic and Non-conventional Pollutants Discharged to POTWs

All indirect dischargers are subject to general pretreatment standards (40 CFR 403), including a prohibition on discharges causing ''pass through'' or ''interference.'' See 40 CFR 403.5. All POTWs with approved pretreatment programs must develop local limits to implement the general pretreatment standards. All other POTWs must develop such local limits where they have experienced ''pass through'' or ''interference'' and such a violation is likely to recur. There are approximately 1,500 POTWs with approved pretreatment programs and 13,500 small POTWs that are not required to develop and implement pretreatment programs.

In addition, EPA establishes technology-based national regulations, termed ''categorical pretreatment standards,'' for categories of industry discharging pollutants to POTWs that may pass through, interfere with or otherwise be incompatible with POTW operations. CWA section 307(b). Generally, categorical pretreatment standards are designed such that wastewaters from direct and indirect industrial dischargers are subject to similar levels of treatment. EPA has promulgated such pretreatment standards for 35 industrial categories.

One of the tools traditionally used by EPA in evaluating whether pollutants ''pass through'' a POTW, is a comparison of the percentage of a pollutant removed by POTWs with the percentage of the pollutant removed by discharging facilities applying BAT. Pretreatment standards for existing sources are technology based and are analogous to BAT effluent limitations guidelines. In most cases, EPA has concluded that a pollutant passes through the POTW when the median percentage removed nationwide by representative POTWs (those meeting secondary treatment requirements) is less than the median percentage removed by facilities complying with BAT effluent limitations guidelines for that pollutant. This approach to the definition of ''pass through'' satisfies two competing objectives set by Congress: (1) That standards for indirect dischargers be equivalent to standards for direct dischargers; and (2) that the treatment capability and performance of POTWs be recognized and taken into account in regulating the discharge of pollutants from indirect dischargers.

The term ''interference'' means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both: (1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and (2) therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with applicable regulations or permits. See 40 CFR 403.3(i). *To determine the potential for ''interference,'' EPA generally evaluates the industrial indirect discharges in terms of:* (1) The compatibility of industrial wastewaters and domestic wastewaters (*e.g.,* type of pollutants discharged in industrial wastewaters compared to pollutants typically found in domestic wastewaters); (2) concentrations of pollutants discharged in industrial wastewaters that might cause interference with the POTW collection system, the POTW treatment system, or biosolids disposal options; and (3) the potential for variable pollutant loadings to cause interference with POTW operations (*e.g.,* batch discharges or slug loadings from industrial facilities interfering with normal POTW operations).

If EPA determines a category of indirect dischargers causes pass through or interference, EPA would then consider the BAT and BPT factors (including ''such other factors as the Administrator deems appropriate'') specified in section 304(b) to determine whether to establish pretreatment standards for these activities. Examples of ''such other factors'' include a consideration of the magnitude of the hazard posed by the pollutants discharged as measured by: (1) The total annual TWPE discharged by the industrial sector; and (2) the average TWPE discharge among facilities that discharge to POTWs. Additionally, EPA would consider whether other regulatory tools (*e.g.,* use of local limits under Part 403) or voluntary measures would better control the pollutant discharges from this category of indirect dischargers. For example, EPA relied on a similar evaluation of ''pass through potential'' in its prior decision not to promulgate national categorical

pretreatment standards for the Industrial Laundries industry. See 64 FR 45071 (August 18, 1999). EPA noted in this 1999 final action that, ''While EPA has broad discretion to promulgate such [national categorical pretreatment] standards, EPA retains discretion not to do so where the total pounds removed do not warrant national regulation and there is not a significant concern with pass through and interference at the POTW.'' See 64 FR 45077 (August 18, 1999).

EPA reviewed TRI 2005 discharge data in order to identify industry categories without categorical pretreatment standards that are discharging pollutants to POTWs that may pass through, interfere with or otherwise be incompatible with POTW operations (*see* DCN 05515). This review did not identify any such industrial categories. EPA also evaluated stakeholder comments and pollutant discharge information in the previous annual reviews to inform this review.

In particular, commenters on the 2004 and 2006 annual reviews raised concerns about discharges of pollutants of emerging concern such as endocrine disruptors from health service facilities and mercury discharges from dentists and urged EPA to consider establishing effluent guidelines and pretreatment standards for such discharges. In response to these comments, EPA investigated the Health Services Industry in its 2005 and 2006 annual reviews and found that it did not have readily available information to make an informed decision on the potential for ''pass through'' or ''interference.'' Consequently, EPA identified this industrial category for detailed study in its preliminary 2006 Plan. EPA also received stakeholder comments on the issues of dental amalgam and unused pharmaceuticals management for the Health Services Industry in response to the 2007 annual review.

As discussed below EPA is not identifying dental facilities for an effluent guidelines rulemaking in this notice. However, EPA is continuing its study of unused pharmaceutical management for the Health Services Industry. EPA also solicits comment and data on all industrial sectors not currently subject to categorical pretreatment standards for its 2009 review. Finally, EPA solicits comment on methods for collecting and aggregating pollutant discharge data collected by pretreatment programs to further inform its future review of industry categories without categorical pretreatment standards.

B. Health Services Industry

EPA identified the Health Services Industry as a candidate for a detailed study in the final 2006 Effluent Guidelines Program Plan (*see* 71 FR 76656; December 21, 2006). The Health Services Industry includes establishments engaged in various aspects of human health (*e.g.,* hospitals, hospices, long-term care facilities, dentists) and animal health (*e.g.,* veterinarians). Health services establishments fall under SIC major group 80 ''Health Services'' and industry group 074 ''Veterinary Services.'' According to the 2002 Census, there are over 475,000 facilities in the Health Services Industry (*see* EPA–HQ–OW–2004–0032–1615). EPA is including the following sectors within the Health Services Industry in its detailed study: Offices and Clinics of Dentists; Doctors and Mental Health Practitioners; Nursing and Personal Care Facilities (long-term care facilities); Hospitals, Hospices and Clinics; Medical Laboratories and Diagnostic Centers; and Veterinary Care Services (*see* August 29, 2005; 70 FR 51054). As discussed below, EPA is focusing on two main issues for these sectors within this industry.

All these sectors require services to be delivered by trained professionals for the purpose of providing health care and social assistance for individuals or animals. These entities may be free standing or part of a hospital or health system and may be privately or publicly owned. The services can include diagnostic, preventative, cosmetic, and curative health services.

The vast majority of establishments in the health services industries are not subject to categorical limitations and standards. In 1976, EPA promulgated 40 CFR 460, which only applies to direct discharging hospitals. Part 460 did not establish pretreatment standards for indirect discharging facilities.

In evaluating the health services industries to date, EPA has found little readily available information from EPA databases. Both PCS and TRI contain sparse information on health care service establishments. For 2002, PCS only has data for two facilities that are considered ''major'' sources of pollutants, and only Federal facilities in the healthcare industry are required to report to TRI.

Based on preliminary information, major pollutants of concern in discharges from health care service establishments include solvents, mercury, pharmaceuticals, and biohazards (*e.g.,* items contaminated with blood) (*see* EPA–HQ–OW–2004–0032–0729). The majority of the mercury originates from the following sources: Amalgam used in dental facilities and medical equipment, laboratory reagents, and cleaning supplies used in healthcare facilities (*see* EPA–HQ–OW 2004 0032 0038 and 2391). EPA found little to no quantitative information on wastewater discharges of pollutants of emerging concern such as pharmaceuticals but was able to identify some information on biohazards (*see* DCN EPA–HQ–OW–2006–0771–0533).

As described above, the Health Services Industry is expansive and contains approximately half a million facilities. Because of the size and diversity of this category and other resource constraints, EPA decided to focus its detailed study on certain types of dischargers. EPA selected its focus areas, for the most part, to respond to stakeholder concerns. The focus areas are:

- *Dental mercury:* EPA focused its evaluation on mercury discharges from the offices and clinics of dentists due to the potential hazard and bioaccumulative properties associated with mercury.
- *Unused pharmaceuticals:* EPA is focusing its evaluation on the management of unused or leftover pharmaceuticals from health service facilities due to the growing concern over the discharge of pharmaceuticals into water and the potential environmental effects.

1. Dental Mercury

The Agency notes that it has an overall interest in mercury reduction and on July 5, 2006, issued a report titled, ''EPA's Roadmap for Mercury,'' (*see* EPA–HQ–OW–2004–0032–1612). Among other things, EPA's report highlights mercury sources and describes progress to date in addressing mercury sources. As part of the 2008 Health Services Industry detailed study, EPA researched the following questions/topics for the 2008 final plan as they relate to disposal of mercury into municipal sewer systems:

- What are current industry practices regarding the mercury disposal? To what extent are each of these practices applied? What factors drive current practices?
- Are there federal, state, or local requirements or guidance for disposal of mercury? What are these requirements?
- How are control authorities currently controlling (or not controlling) disposal of mercury via wastewater?
- To what extent do POTWs report pass through or interference problems related to mercury discharges?

• *What technologies are available:* (1) As alternatives to wastewater disposal; and (2) to control pollutant discharges. Is there any qualitative or quantitative information on their efficiency?

• What Best Management Practices (BMPs) are used as alternatives to wastewater disposal and/or to control discharges and is there any qualitative or quantitative information on their efficiency?

• Is there any quantitative or qualitative information on the costs associated with identified technologies and/or BMPs?

Across the United States, many States and municipal wastewater treatment plants (publicly owned treatment works—POTWs) are working toward the goal of reducing discharges of mercury into collection systems. Many studies have been conducted in an attempt to identify the sources of mercury entering these collection systems. According to the 2002 Mercury Source Control and Pollution Prevention Program Final Report prepared for the National Association of Clean Water Agencies (NACWA), dental clinics are the main source of mercury discharges to POTWs. The American Dental Association (ADA) estimated in 2003 that up to 50% of mercury entering POTWs was contributed by dental offices (*see* DCN 04698).

EPA estimates there are approximately 160,000 dentists working in 120,000 dental offices that use or remove amalgam in the United States—almost all of which discharge their wastewater exclusively to POTWs. Mercury in dental wastewater originates from waste particles associated with the placement and removal of amalgam fillings. Most dental offices currently use some type of basic filtration system to reduce the amount of mercury solids passing into the sewer system. However, best management practices and the installation of amalgam separators, which generally have a removal efficiency of 95%, have been shown to reduce discharges even further. A recent study funded by NACWA (*see* DCN 04225) concluded that the use of amalgam separators results in reductions in POTW influent concentrations and biosolids mercury concentrations. Use of amalgam separators does not always result in reductions in POTW effluent, however, since most amalgam particles are removed with biosolids. Mercury that partitions to wastewater sludge may be incinerated or disposed to a landfill.

States, Regions, and localities have implemented mandatory and voluntary programs to reduce dental mercury discharges. Specifically, 11 states and at least 19 localities have mandatory pretreatment programs that require the use of dental mercury amalgam separators (*see* DCN 05518). Additionally, at least 20 POTWs have voluntary programs to reduce mercury discharges from dental offices. Success rates for these voluntary programs vary greatly, and are usually higher when there is a mandatory ''second phase'' to the voluntary program. EPA Region 5 published guidance for permitting dental mercury discharges (*see* EPA–HQ–OW–2006–0771–0460). The ADA has also adopted and published best management practices for its members. On October 2, 2007, the ADA updated its best management practices to include the use of amalgam separators (*see* EPA–HQ–OW–2006–0771–0211). The document titled ''Health Services Industry Detailed Study: Dental Amalgam,'' compiles the information EPA has collected to date on existing guidance and requirements for dental mercury (*see* DCN 05518).

In 2007 and 2008, EPA focused its efforts on collecting and compiling information on current mercury discharges from dental offices, best management practices (BMPs), and amalgam separators. For amalgam separators, EPA looked at the frequency with which they are currently used; their effectiveness in reducing discharges to POTWs; and the capital and annual costs associated with their installation and operation (*see* DCN 05518). EPA also conducted a POTW pass-through analysis on mercury for the industry.

EPA received comments from 32 stakeholders on the preliminary 2008 Plan. Most commenters were from pretreatment programs that provided useful information on their mandatory and voluntary pretreatment programs that include the use of amalgam separators. EPA used this information to update its final report on management and best practices for the control of dental mercury (*see* DCN 05518). ADA and NACWA commented that although they do not support development of national pretreatment standards, they are willing to work with one another and EPA to increase the use of amalgam separators by dental facilities. EPA is exploring options with ADA and NACWA to promote the use of amalgam separators.

In response to mercury water quality and pollution prevention concerns, there is progress at the State and local level as amalgam separators and other BMPs are increasingly being mandated by States and local governments. ADA's recently revised BMPs will likely help in convincing dentists to install amalgam separators and employ other BMPs to recover dental amalgam and prevent the discharge of mercury to POTWs. This will help POTWs reduce the amount of mercury in their biosolids and the potential for mercury emissions when biosolids are incinerated. Additionally, due to mercury-free fillings and improved overall dental health, the use of mercury in dentistry is decreasing in the U.S. (*see* DCN 05518).

At this time EPA is not identifying this sector for an effluent guidelines rulemaking. As previously noted above, industrial categories demonstrating significant progress through voluntary efforts to reduce hazard to human health or the environment associated with their effluent discharges are a lower priority for effluent guidelines or pretreatment standards revision, particularly where such reductions are achieved by a significant majority of individual facilities in the industry. As an example, in the final 2006 Plan EPA relied on a national voluntary partnership program for the industrial laundries sector as a factor in not identifying the industrial laundries sector for an effluent guidelines rulemaking (*see* EPA–HQ–OW–2004–0032–2782, Section 19.9). In future annual reviews, EPA will continue to examine the percentage of dentists using amalgam separators and their effectiveness at recovering dental amalgam and reducing mercury discharges to POTWs. EPA notes ADA's recent positive step in revising their BMPs to include the recommendation for dentists to use amalgam separators. In particular, EPA will examine whether a significant majority of dentists are utilizing amalgam separators. After such examination, EPA may re-evaluate its current view not to initiate an effluent guidelines rulemaking for this sector.

2. Unused Pharmaceuticals

To date, scientists have identified more than 160 pharmaceutical compounds at discernable concentrations in our nation's rivers, lakes, and streams (*see* Section 3 of DCN 05519). To address this issue at the source, EPA is studying how the drugs are entering our waterways and what factors contribute to the current situation. Towards this end, EPA initiated a study on pharmaceutical disposal practices at health care facilities, such as hospitals, hospices, long-term care facilities, and veterinary hospitals. Unused pharmaceuticals include dispensed prescriptions that patients do not use as well as materials that are beyond their expiration dates. Another potential source of unused pharmaceuticals is the residuals

remaining in used and partially used dispensers, containers, and devices. Many of these dispensers, containers, and devices are bulky and are likely not disposed to the sewer as they could create blockages in the sewer; however, some might be sewered (e.g., medical patches). As a point of clarification, the term ''unused pharmaceuticals'' does not include excreted pharmaceuticals.

For many years, a standard practice at many health care facilities was to dispose of unused pharmaceuticals by flushing them down the toilet or drain. Through this study, EPA seeks to investigate the following questions:

- What are the current industry practices for disposing of unused pharmaceuticals?
- Which pharmaceuticals are being disposed of and at what quantities?
- What are the options for disposing of unused pharmaceuticals other than down the drain or toilet?
- What factors influence disposal decisions?
- Do disposal practices differ within industry sectors?
- What Best Management Practices (BMPs) could facilities implement to reduce the generation of unused pharmaceuticals?
- What reductions in the quantities of pharmaceuticals discharged to POTWs would be achieved by implementing BMPs or alternative disposal methods?
- What are the costs of current disposal practices compared to the costs of implementing BMPs or alternative disposal methods?

In a related effort, EPA also seeks to determine the effectiveness with which publicly-owned treatment works (POTWs) can remove pharmaceuticals from incoming sewage. Upon completion of the health services study, EPA hopes to understand what factors contribute to unused pharmaceutical disposal methods at health service facilities and which disposal methods represent best practices to minimize environmental impacts.

To date, EPA has completed an interim study of the health services industry (*see* DCN 05519). To gather data for the study, EPA completed site visits to two hospitals and a pharmaceutical reverse distributor; investigated secondary data sources such as existing institutional surveys on disposal practices; and conducted a series of meetings and teleconferences with other Federal agencies and health care stakeholder groups.

The study focused on hospitals and long-term care facilities (LTCFs) because these facilities are likely responsible for the largest amounts of unused pharmaceuticals being disposed into sewage collection systems within this industry sector. In 2005, there were about 7,000 hospitals and 35,000 LTCFs in the United States (*see* DCN 05519).

EPA's four preliminary findings include:

(1) Federal, state, and local laws and regulations often require special handling of pharmaceutical waste. These laws and regulations can influence the options hospitals and long-term care facilities have for disposing of unused pharmaceuticals.

- Some federal regulations may inadvertently encourage disposal of unused pharmaceuticals via the sewer. The Controlled Substances Act (CSA), enforced by the Drug Enforcement Administration (DEA), establishes a closed distribution system for controlled substances. The CSA prohibits the return of controlled substances from end-users to any person except, in certain cases, a law-enforcement agent and CSA registrants. Disposal of controlled substances by CSA registrants is carefully regulated to ensure that the substance is destroyed or rendered unrecoverable. One acceptable method of destruction is witnessed disposal of controlled substances in a drain or toilet.
- Some unused pharmaceuticals are regulated as hazardous wastes and subject to the nation's hazardous waste disposal requirements. Pharmaceutical wastes may be hazardous waste (under the Resource Conservation and Recovery Act (RCRA)) if they are: (1) the pharmaceutical or its sole active ingredient is specifically listed in 40 CFR part 261.33(e) or (f) (commonly referred to as the P or U lists, respectively); and/or (2) the waste exhibits one or more characteristics of hazardous waste (ignitability, corrosivity, reactivity, or toxicity as defined in 40 CFR parts 261.21–24, respectively). Common pharmaceutical wastes that are RCRA hazardous waste when disposed of include epinephrine, nitroglycerin, warfarin, nicotine, and some chemotherapeutic agents.[4] Healthcare facilities must determine if these wastes are RCRA hazardous wastes, and if so, must comply with all applicable RCRA Subtitle C requirements, including many special handling and transportation requirements.
- State regulations vary widely and influence disposal practices. State regulations of the disposal of unused pharmaceuticals and controlled substances vary widely (*see* DCNs 04952 and 04953). Many state regulations require both hospitals and LTCFs to destroy unused pharmaceuticals but often do not specify the process of destruction; however, many states (33 states according to DCN 04953) have requirements for the types of facility personnel required to conduct and oversee the destruction. Some states have hazardous waste regulations that are more stringent than EPA (*see* DCN 04944). For example, some wastes are regulated as hazardous under state law but not RCRA (*see* Table 4–1 of DCN 05519). State regulations for reuse of medications vary widely. Many states allow re-use of uncontaminated pharmaceuticals (excluding controlled substances) that have been in a controlled environment, such as an automatic dispensing system (*see* DCN 04952). At least five states strictly prohibit hospitals and LTCFs from reusing pharmaceuticals entirely. These states include Arizona, Kentucky, Mississippi, New Mexico, and Texas. California allows county health departments to collect unused pharmaceuticals from LTCFs, wholesalers, and manufacturers and redistribute them for dispensing to the uninsured poor. Some State Medicare and Medicaid requirements often deter LTCFs from donating or redistributing their unused medications (*see* DCN 05961).
- Medicare and Medicaid requirements also influence hospital disposal practices. The Centers for Medicare and Medicaid Services (CMS), the federal agency within the Department of Health and Human Services, administers the Medicare and Medicaid programs. Medicare provides health insurance to elderly and disabled Americans, while Medicaid provides health insurance for low income Americans, including long-term care coverage (*see* DCN 05074). In a March 22, 2006 letter, CMS provided guidance to State Medicaid programs encouraging states to require LTCFs to return unused medications to pharmacies and to ensure Medicaid is repaid for unused treatments when nursing home patients die, are discharged, or have their prescriptions changed. In addition, some state Medicaid programs require LTC pharmacies to accept returned unused pharmaceuticals (excluding controlled substances) from LTCFs. The LTC pharmacy then credits Medicaid for

[4] The Agency clarified its regulation at 40 CFR 261.33, explaining that epinephrine salts are not included in the epinephrine P042 listing (since the listing only specifies epinephrine and not epinephrine salts); the salts, therefore, would be hazardous only if the waste epinephrine salt exhibited one or more of the hazardous waste characteristics (*see* ''Scope of Hazardous Waste Listing P042 (Epinephrine),'' October 15, 2007, RCRA Online# 14778)''

the unused doses. However, LTC pharmacies typically receive little payment for these return services and have not found them to be cost effective. For example, when a pharmacy takes back a previously dispensed medication for disposal, it must pay to have the medication destroyed, but it is not compensated for this service (*see* DCN 04952). Therefore, few LTC pharmacies participate in these programs.

(2) Organization size, ease and access of disposal, and cost are also factors influencing the disposal of unused pharmaceuticals.

Some facilities use flushing to sewers as a primary means of disposal since it is both easy and complies with CSA requirements for destruction. Facilities are most likely to flush pharmaceuticals if they do not have an on-site pharmacy and/or do not have a pre-existing contract with a hazardous waste hauler to dispose of the pharmaceuticals. In the past, public health agencies and health-related non-government organizations guided the public to destroy unused medications by flushing them down the toilet. Many LTCFs have adopted this method for destruction of unused controlled substances. Many LTCFs have also extended this practice to include flushing all unused medications—controlled and non controlled substances (*see* EPA-HQ-OW–2006–0771–0851).

(3) Fewer disposal opportunities exist for long-term care facilities because they are often not CSA registrants and cannot generally return pharmaceuticals to the manufacturer or use reverse distributors.

Hospitals typically have on-site pharmacies. It is common practice at hospitals to return some unused pharmaceuticals to the hospital pharmacy and then on to the manufacturer for credit or disposal. However, this option extends only to those pharmaceuticals for which the hospital can receive credit and does not include unused pharmaceuticals that are considered waste (*e.g.*, pharmaceuticals in an intravenous bag, drug samples brought into the hospital). Also, hospitals typically do not prescribe medication far in advance or in large quantities. As a result, the potential for pharmaceuticals to be wasted is reduced. In addition, hospitals typically have pre-existing arrangements for disposal of unused pharmaceuticals as hazardous waste (*see* EPA-HQ-OW–2006–0771–0851).

(4) Best management practices, if widely implemented, have the potential to reduce the amount of unused pharmaceuticals entering our nation's waters from disposal.

Three organizations provide guidance in the form of Best Management Practices (BMPs) to medical facilities on managing pharmaceutical waste: Hospitals for a Healthy Environment (H2E), Product Stewardship Institute (PSI), and Joint Commission on Accreditation of Healthcare Organizations (JCAHO). The guidelines provided by these organizations all aim to reduce health and environmental impacts due to current disposal practices of pharmaceutical waste, as discussed in Section 5.2 of the Interim Technical Report (*see* DCN 05519). Examples of model BMPs identified to date include waste minimization and reverse distribution systems used by hospitals in California, Minnesota, and Washington. Waste minimization techniques include maintaining inventories of high-use pharmaceuticals and identifying those that are close to expiring. Short-dated pharmaceuticals are redistributed to other areas of the hospitals where they are needed. Also, dispensed pharmaceuticals can go unused at a hospital or LTCF if the patient has an allergic or adverse reaction to the medication, no longer requires treatment, refuses treatment, or the medication expires. Hospitals and LTCFs can reduce the amount of pharmaceutical waste generated by limiting the amount of pharmaceuticals dispensed to patients and residents at one time. This can be accomplished by using unit dose packaging, limited quantity dispensing, automatic dispensing systems, and standardized medication dosages, as discussed in Section 5.2 of the Interim Technical Report (*see* DCN 05519). Hospitals and LTCFs have the option of hiring reverse distributors to manage their unused and/or expired medication that the facility believes could be returned to the manufacturer or wholesaler for credit. The reverse distributor determines which medications may be returned to the manufacturer or wholesaler for credit and arranges for disposal of unused medications that are waste. However, there are CSA limitations for reverse distributors and controlled substances. In most cases, reverse distributors cannot handle controlled substances.

EPA is concerned about pharmaceuticals in the environment and is working on this issue in many different areas. Over the last few years, EPA has increased its work in a number of areas to better understand pharmaceuticals. EPA has an overall strategy to address the risks associated with emerging contaminants. This four-pronged strategy is aimed at improving science, improving public understanding, identifying partnership and stewardship opportunities, and taking regulatory action as appropriate. We are focused on learning more about the occurrence and health effects of pharmaceuticals in water. In addition, we are working to better understand what treatment technologies may remove them from wastewater and drinking water. We are developing analytical methods to improve detection capabilities. We are conducting national studies and surveys to help direct our course of action. We are also partnering with government agencies, stakeholders, and the private sector, and increasing public awareness about product stewardship and pollution prevention (*see* DCN 06111). Additionally, the Agency is considering amending its hazardous waste regulations to add hazardous pharmaceutical wastes to the universal waste system to facilitate its oversight of the disposal of pharmaceutical waste (40 CFR 273) (*see* RIN 2050–AG39, April 30, 2007; 72 FR 23170). In addition, the inclusion of hazardous pharmaceutical wastes in the universal waste rule may encourage health care facilities to manage all their pharmaceutical wastes as universal wastes, even wastes that are not regulated as hazardous but which nonetheless pose hazards. Finally, EPA has identified the issue of pharmaceuticals in wastewater is part of the Agency's Strategic Plan (2006–2011) to meet its goals of clean and safe water.[5]

EPA continues to study the issue of how health care facilities are managing and disposing of unused pharmaceuticals and POTW treatment effectiveness in an effort to identify the root cause and potential solutions to address the issue of pharmaceuticals in our waterways. Over the coming year, EPA will need to gather more technical and economic information on unused pharmaceutical management in the Health Services Industry. To aid its decision-making, EPA intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for their review and approval under the Paperwork Reduction Act (PRA), 33 U.S.C. 3501, et seq., during the 2009 annual review. EPA will use this ICR to collect technical and economic information on unused pharmaceutical management and identify technologies and BMPs that reduce or eliminate the discharge of unused pharmaceuticals to POTWs. In designing this industry survey EPA

[5] See ''2006–2011 EPA Strategic Plan,'' *http://www.epa.gov/ocfo/plan/plan.htm.*

expects to work closely with industry representatives from hospitals, hospices, long-term care facilities, veterinary hospitals and other affected stakeholders. EPA has published a separate **Federal Register** notice for this ICR and solicits comment on the potential scope of this ICR (*see* August 12, 2008; 73 FR 46903).

EPA also plans to conduct additional site visits to facilities to obtain more detailed information on how pharmaceuticals are managed, tracked, and disposed as well as influences on behavior. In addition, EPA is considering collecting data from other types of health care facilities (e.g., medical and dental offices, university and prison health clinics, and veterinary clinics). EPA is also reviewing studies on POTW effectiveness. EPA remains concerned about this issue and plans to expedite completion of this study.

VIII. The Final 2008 Effluent Guidelines Program Plan Under Section 304(m)

In accordance with CWA section 304(m)(2), EPA published the preliminary 2008 Plan for public comment prior to this publication of the final 2008 Plan. See October 30, 2007 (72 FR 61335). The Agency received 32 comments from a variety of commenters including industry and industry trade associations, municipalities and sewerage agencies, environmental groups, and State government agencies. Many of these public comments are discussed in this notice. The Docket accompanying this notice includes a complete set of all of the comments submitted, as well as the Agency's responses (*see* DCN 06109). EPA carefully considered all public comments and information submitted to EPA in developing the final 2008 Plan.

A. EPA's Schedule for Annual Review and Revision of Existing Effluent Guidelines Under Section 304(b)

1. Schedule for 2007 and 2008 Annual Reviews Under Section 304(b)

As noted in section IV.B, CWA section 304(m)(1)(A) requires EPA to publish a Plan every two years that establishes a schedule for the annual review and revision, in accordance with section 304(b), of the effluent guidelines that EPA has promulgated under that section. This final 2008 Plan announces EPA's schedule for performing its section 304(b) reviews. The schedule is as follows: EPA will coordinate its annual review of existing effluent guidelines under section 304(b) with its publication of the preliminary and final Plans under CWA section 304(m). In other words, in odd-numbered years, EPA intends to complete its annual review upon publication of the preliminary Plan that EPA must publish for public review and comment under CWA section 304(m)(2). In even-numbered years, EPA intends to complete its annual review upon the publication of the final Plan. EPA's 2008 annual review is the review cycle ending upon the publication of this final 2008 Plan.

EPA is coordinating its annual reviews under section 304(b) with publication of Plans under section 304(m) for several reasons. First, the annual review is inextricably linked to the planning effort, because the results of each annual review can inform the content of the preliminary and final Plans, e.g., by identifying candidates for effluent guidelines revision for which EPA can schedule rulemaking in the Plan, or by calling to EPA's attention point source categories for which EPA has not promulgated effluent guidelines. Second, even though not required to do so under either section 304(b) or section 304(m), EPA believes that the public interest is served by periodically presenting to the public a description of each annual review (including the review process employed) and the results of the review. Doing so at the same time EPA publishes preliminary and final plans makes both processes more transparent. Third, by requiring EPA to review all existing effluent guidelines each year, Congress appears to have intended that each successive review would build upon the results of earlier reviews. Therefore, by describing the 2008 annual review along with the final 2008 Plan, EPA hopes to gather and receive data and information that will inform its reviews for 2009 and 2010 and the final 2010 Plan.

2. Schedule for Possible Revision of Effluent Guidelines Promulgated Under Section 304(b)

EPA is currently conducting rulemakings to potentially revise existing effluent guidelines and pretreatment standards for three categories. For the Organic Chemicals, Plastics and Synthetic Fibers (OCPSF) and Inorganic Chemicals categories, the effluent guidelines rulemaking is focused on discharges from Vinyl Chloride and Chlor-Alkali facilities. EPA first identified this effluent guidelines rulemaking in the final 2004 Plan and refers to it as the ''Chlorine and Chlorinated Hydrocarbon (CCH) manufacturing'' rulemaking. EPA emphasizes that identification of the rulemaking schedules for these effluent guidelines does not constitute a final decision to revise the guidelines. EPA may conclude at the end of the formal rulemaking process—supported by an administrative record and following an opportunity for public comment—that effluent guidelines revisions are not appropriate for these categories. EPA is not scheduling any other existing effluent guidelines for rulemaking at this time.

B. Identification of Potential New Point Source Categories Under CWA Section 304(m)(1)(B)

The final Plan must also identify categories of sources discharging toxic or non-conventional pollutants for which EPA has not published effluent limitations guidelines under section 304(b)(2) or new source performance standards (NSPS) under section 306. See CWA section 304(m)(1)(B). The final Plan must also establish a schedule for the promulgation of effluent guidelines for the categories identified under section 304(m)(1)(B), providing for final action on such rulemaking not later than three years after the identification of the category in a final Plan.[6] See CWA section 304(m)(1)(C).

EPA is currently conducting effluent guidelines rulemakings for two potential new categories (*see* September 2, 2004; 69 FR 53705). One of these categories—Airport Deicing Operations—was identified as a potential new category in the final 2004 Plan. EPA plans to propose these effluent guidelines for Airport Deicing Operations later this calendar year. EPA initiated new rulemaking for the other category—Construction and Development—because it was directed to do so by a district court order. *Natural Resources Defense Council et al.* v. *U.S. Environmental Protection Agency,* No. 04–8307, order (C.D. Ca. December 6, 2006). EPA disagrees with the district court's decision and an appeal is currently pending before the Ninth Circuit; however, in order to comply with the district court's order EPA is conducting the rulemaking ordered by the court. The district court order requires EPA to propose a rule by December 1, 2008 and finalize it by December 1, 2009. EPA expects to meet this court order with the publication of

[6] EPA recognizes that one court—the U.S. District Court for the Central District of California—has found that EPA has a duty to *promulgate* effluent guidelines within three years for new categories identified in the Plan. *See NRDC et al.* v. *EPA,* 437 F.Supp.2d 1137 (C.D. Ca. 2006). However, an appeal is currently pending before the Ninth Circuit and EPA continues to believe that the mandatory duty under section 304(m)(1)(c) is limited to mandating a *schedule* for concluding the effluent guidelines rulemaking—not for promulgating new effluent guidelines—within three years.

the proposed rule for Construction and Development no later than December 1, 2008 and publication of the final rule one year later.

For the reasons discussed below, EPA is not identifying any potential new category for effluent guidelines rulemaking. Therefore, EPA is not scheduling effluent guidelines rulemaking for any category is this final Plan. In the 2004 Plan, EPA announced that it would begin development of a regulation to control the pollutants discharged from drinking water treatment plants. See 69 FR 53720 (September 2, 2004). Based on preliminary study and on public comments, EPA was interested in the potential volume of discharges associated with drinking water facilities. The preliminary data were not conclusive, and the Agency proceeded with additional study and analysis of treatability, including an industry survey. The additional analysis included extensive information about the industry, its treatment residuals, wastewater treatment options, and discharge characteristics. EPA is evaluating a range of effluent guidelines priorities, including court-mandated actions, and plans to make a decision shortly on whether to continue work on this rulemaking.

In order to identify industries not currently subject to effluent guidelines, EPA primarily used data from TRI and PCS. Facilities with data in TRI and PCS are identified by a four-digit SIC code (*see* DCN 05515). EPA performed a crosswalk between the TRI and PCS data, identified with the four-digit SIC code, and the 56 point source categories with effluent guidelines or pretreatment standards to determine if a four-digit SIC code is currently regulated by existing effluent guidelines (*see* DCN 05515). EPA also relied on comments received on its previous 304(m) plans to identify potential new categories. EPA then assessed whether these industrial sectors not currently regulated by effluent guidelines meet the criteria specified in section 304(m)(1)(B), as discussed below (*see* DCN 06112). EPA notes that the Ninth Circuit has recently held that the precise number and kind of categories identified by EPA in its 304(m) planning process is discretionary with the Administrator. *Our Children's Earth* v. *EPA,* 527F.3d 842, 852 (9th Cir. 2008).

The first criterion for identifying industries under section 304(m)(1)(B) is whether they are ''categories of sources'' for which EPA has not promulgated effluent guidelines. Because this section does not define the term ''categories,'' EPA interprets this term based on the use of the term in other sections of the Clean Water Act, legislative history, and Supreme Court case law, and in light of longstanding Agency practice. These sources indicate that the term ''categories'' refers to an industry as a whole based on similarity of product produced or service provided, and is not meant to refer to specific industrial activities or processes involved in generating the product or service. EPA therefore identifies in its biennial Plan only those new industries that it determines are properly considered stand-alone ''categories'' within the meaning of the Act—not those that are properly considered potential new subcategories of existing categories based on similarity of product or service.

EPA's interpretation of the term ''categories'' is consistent with longstanding Agency practice. Pursuant to CWA section 304(b), which requires EPA to establish effluent guidelines for ''classes and categories of point sources,'' EPA has promulgated effluent guidelines for 56 industrial ''categories.'' Each of these ''categories'' consists of a broad array of facilities that produce a similar product or perform a similar service—and is broken down into smaller subsets, termed ''subcategories,'' that reflect variations in the processes, treatment technologies, costs and other factors associated with the production of that product that EPA is required to consider in establishing effluent guidelines under section 304(b). For example, the ''Pulp, Paper and Paperboard point source category'' (40 CFR part 430) encompasses a diverse range of industrial facilities involved in the manufacture of a like product (paper); the facilities range from mills that produce the raw material (pulp) to facilities that manufacture end-products such as newsprint or tissue paper. EPA's classification of this ''industry by major production processes used many of the statutory factors set forth in CWA Section 304(b), including manufacturing processes and equipment (*e.g.*, chemical, mechanical, and secondary fiber pulping; pulp bleaching; paper making); raw materials (*e.g.*, wood, secondary fiber, non-wood fiber, purchased pulp); products manufactured (*e.g.*, unbleached pulp, bleached pulp, finished paper products); and, to a large extent, untreated and treated wastewater characteristics (*e.g.*, BOD loadings, presence of toxic chlorinated compounds from pulp bleaching) and process water usage and discharge rates.'' [7] Each subcategory reflects differences in the pollutant discharges and treatment technologies associated with each process. Similarly, the ''Iron and Steel Manufacturing point source category'' (40 CFR part 420) consists of various subcategories that reflect the diverse range of processes involved in the manufacture of iron and steel, ranging from facilities that make the basic fuel used in the smelting of iron ore (subpart A—Cokemaking) to those that cast the molten steel into molds to form steel products (subpart F—Continuous Casting). An example of an industry category based on similarity of service provided is the Transportation Equipment Cleaning Point Source Category (40 CFR Part 442), which is subcategorized based on the type of tank (*e.g.*, rail cars, trucks, barges) or cargo transported by the tanks cleaned by these facilities, reflecting variations in wastewaters and treatment technologies associated with each.

The second criterion EPA considers when implementing section 304(m)(1)(B) also derives from the plain text of that section. By its terms, CWA section 304(m)(1)(B) applies only to industrial categories to which effluent guidelines under section 304(b)(2) or section 306 would apply, if promulgated. Therefore, for purposes of section 304(m)(1)(B), EPA would not identify in the biennial Plan any industrial categories comprised exclusively or almost exclusively of indirect discharging facilities regulated under section 307.

Third, CWA section 304(m)(1)(B) applies only to industrial categories of sources that discharge toxic or non-conventional pollutants to waters of the United States. EPA therefore did not identify in the Plan industrial activities for which conventional pollutants, rather than toxic or non-conventional pollutants, are the pollutants of concern. In addition, even when toxic and non-conventional pollutants might be present in an industrial category's discharge, section 304(m)(1)(B) does not apply when those discharges occur in trivial amounts. This decision criterion leads EPA to focus on those remaining industrial categories where, based on currently available information, new effluent guidelines have the potential to address a non-trivial discharge of toxic or non-conventional pollutants.

Finally, EPA interprets section 304(m)(1)(B) to give EPA the discretion to identify in the Plan only those

[7] U.S. EPA, 1997. *Supplemental Technical Development Document for Effluent Limitations Guidelines and Standards for the Pulp, Paper, and Paperboard Category,* Page 5–3, EPA–821–R–97–011, October 1997.

potential new categories for which an effluent guidelines rulemaking may be an appropriate tool for controlling discharges. Therefore, EPA does not identify in the Plan all potential new categories discharging toxic and non-conventional pollutants. Rather, EPA identifies only those potential new categories for which it believes that effluent guidelines may be appropriate, taking into account Agency priorities, resources and the full range of other CWA tools available for addressing industrial discharges.

IX. Request for Comment and Information

A. EPA Requests Information on the Steam Electric Power Generating Category (Part 423)

EPA solicits public comments on the following areas of interest to support the Steam Electric Power Generating Detailed Study.

• *Treatment technologies for wastewaters from wet FGD systems.* EPA solicits information and data regarding the costs and performance of treatment technologies for wastewater from wet FGD systems. Treatment technologies of interest include, but are not limited to, chemical precipitation, biological systems, evaporation/brine concentration zero liquid discharge, underground injection, and complete recycle. Both capital and annual operations and maintenance costs are requested, as well as information on key variables that determine these costs for any particular facility and how they would vary as a function of plant electric generating capacity, wastewater flow rate, pollutant characteristics, or other factors. To help evaluate efficacy of the treatment technologies, EPA seeks both influent and effluent data from full scale or pilot applications. *Data submitted should include details on:* (1) Date for the sample collection and analysis; (2) identification of laboratory analytical methods; and (3) detailed descriptions of the wastewater treatment system and sample collection points. The description of the treatment system should also include design and operational information such as flow rate (design maximum and average flow rates for the influent scrubber purge and treatment system effluent; typical operating flow rate for the influent purge and effluent; and actual flow rate corresponding to sampling data submitted), residence time, chemical additives, and the flow rates for recirculation flows within the treatment system.

• *Effect of SCR/SNCR on FGD wastewater characteristics.* EPA solicits data quantifying how the operation of selective catalytic reduction (SCR) or selective non-catalytic reduction (SNCR) NO_X emission reduction technologies affects FGD wastewater characteristics. In particular, EPA solicits concentration and mass data for metals, ammonia, and other nitrogen compounds. In addition to data for other metals, EPA solicits information to assess the degree to which SCR or SNCR operation may increase levels of hexavalent chromium in the FGD wastewater.

• *Effects of scrubber additives on FGD wastewater characteristics and treatability.* EPA solicits information on the effect scrubber additives (*e.g.*, dibasic acid (DBA) or formic acid) have on the characteristics of FGD wastewater, and how these additives may positively or negatively affect the treatability of the wastewater. EPA also solicits information on the reasons operators use these additives and why one additive may be considered preferentially over the other (for instance, why an operator would choose to use DBA instead of formic acid, or vice versa).

• *Ash pond management.* EPA solicits information that would help identify best management practices for ash ponds. For example, EPA is aware of information suggesting that managing pyritic wastes in ash ponds should be avoided because it can contribute to lowering pH of the ash pond impoundment, potentially liberating metals in ash sediments and elevating the level of metals released to surface waters. In addition, introducing certain other wastes such as coal pile runoff can substantially affect ash pond pH, similarly producing conditions that favor releasing metals present in ash pond sediments and suspended particulates. EPA solicits information on best management practices for minimizing the potential for such wastes to adversely impact ash pond operation and discharges.

EPA solicits data on pollutant removal performance of ash ponds. Such data should include influent and effluent concentration, mass and flow data. EPA solicits such data for total and dissolved metals, nitrogen compounds (ammonia, total Kjeldahl nitrogen, nitrates, nitrites, and total nitrogen), total dissolved solids, and effluent toxicity.

EPA also solicits information on seasonal effects on ash pond discharges, such as those resulting from seasonal turnover. EPA is particularly interested in the magnitude of the seasonal effects on the concentration and mass of pollutants discharged.

Finally, EPA solicits information that quantify how ash pond discharges have been affected by introducing FGD wastewater into ash ponds that previously did not receive this wastewater.

• *Environmental assessments/impacts.* EPA solicits information on environmental assessments that have been conducted for discharges from steam electric power plants. In particular, EPA seeks information linking the environmental assessments to discharges of metals (*e.g.*, mercury, arsenic, selenium, boron, and magnesium), ammonia and other nitrogen compounds, phosphorus, total dissolved solids, or biocide residuals (*e.g.*, chlorinated or brominated compounds, or non-oxidizing chemical biocides). EPA also solicits information on the toxicity of discharges from power plants, particularly for FGD and ash pond wastewater. EPA also seeks more general information regarding the potential environmental hazard associated with discharges of these pollutants from steam electric power plants.

• *Integrated gasification combined cycle (IGCC) facilities.* EPA solicits comment on the wastewaters that may be generated or otherwise affected by the coal gasification process. What are the sources and characteristics of wastewaters generated by coal gasification and related processes at IGCC plants? How do these wastewaters compare to those of traditional coal-fired steam electric processes? What treatment technologies are being used to treat IGCC wastewaters, and what are the pollutant removal efficiencies of these systems?

• *Carbon dioxide* (CO_2) capture processes. EPA solicits information describing and characterizing wastewaters that may be generated at power plants when implementing processes to capture and dispose of CO_2 emissions.

B. EPA Requests Information on the Coalbed Methane Extraction Sector of the Oil and Gas Extraction Category (Part 435)

EPA is researching the following questions and topics as they relate to the quantity and toxicity of pollutants discharged and the environmental impacts of these discharges to support the Oil and Gas Extraction/Coalbed Methane detailed study.

• What is the range of pollutant concentrations in CBM produced water?

• What is the toxicity of these pollutants to human health and the environment?

• What is the range of pollutant concentrations and what are the CBM produced water flow rates for the major CBM basins?

• What CBM produced water pollutants are typically controlled through permit limits and what is the range of these permit limits?

• What are the observed and potential impacts of CBM produced water discharges on aquatic environments and communities, riparian zones, and other wetlands?

• How does the composition of CBM produced water change when discharged to normally dry draws or ephemeral streams?

• To what extent do CBM produced water discharges mobilize metals, soil nutrients, pesticides and other organic contaminants present in soil and carry these constituents to surface waters?

• What are measures that can mitigate potential impacts to uses of surface waters that are used for irrigation?

EPA is researching the following questions and topics as they relate to the potential technology options and beneficial use practices for this industrial sector.

• What are the current industry treatment technologies for CBM produced water?

• What are the potential beneficial use applications of CBM produced water and what are the corresponding criteria for such uses?

• How effectively do these treatment technologies and beneficial use practices reduce the potential impacts of CBM produced water discharges?

• What is the range of incremental annualized compliance costs associated with these technologies and practices? How do these costs differ between existing and new sources?

• What is the demonstrated use and economic affordability (*e.g.*, production losses, firm failures, employment impacts resulting from production losses and firm failures, impacts on small businesses) of these technologies across the different CBM basins?

• What are the types of non-water quality environmental impacts (including energy impacts) associated with the current industry treatment technologies and beneficial use practices for CBM produced water?

EPA is researching the following questions and topics as they relate to the expansion of CBM exploration and development and the affordability of potential technology options for this industrial sector.

• What is the near-term and long-term growth rate for this industry sector? Which CBM basins are likely to experience the most growth within the next ten years?

• What are the current industry drilling and infrastructure expansion plans for CBM exploration and development?

• What is the predicted range of CBM reserves across the different basins that would be economically recoverable at different natural gas prices?

• What are the potential impacts on developing CBM reserves and operator profitability and rates of return on investment of any increased costs associated with potential industry treatment technologies and beneficial use practices for CBM produced water discharges?

• What is the difference between potential impacts on existing sources versus new sources?

• What percentage of CBM operators are considered small entities?

EPA is researching the following questions and topics as they relate to current regulatory controls.

• How do NPDES permit programs regulate CBM produced water discharges (*e.g.*, individual permits, general permits)?

• What is the BPJ basis for existing technology-based effluent limits for CBM produced water discharges?

• To what extent and how do current regulatory controls ensure the beneficial use of CBM produced water?

• What other statutes might affect the ability to discharge, treat, or beneficially use CBM produced water (*e.g.*, SDWA, RCRA)?

C. EPA Requests Comments and Information on the Following as it Relates to Unused Pharmaceutical Management for the Health Services Industry

• EPA solicits identification of any policies, procedures or guidelines that govern the disposal of unused pharmaceuticals from hospitals and hospices; offices of doctors and mental health practitioners; nursing, long-term care, re-habilitation, and personal care facilities; medical laboratories and diagnostic service facilities; and veterinary care facilities.

• EPA solicits information on the most likely sub-sectors within the Health Service sector that would accumulate unused pharmaceuticals for management and disposal.

• When applicable, to what extent are unused pharmaceuticals disposed according to the Resource Conservation and Recovery Act (RCRA)?

• *EPA solicits comment and data on:* (1) The main factors that drive current disposal practices; and (2) any barriers preventing the reduction or elimination of unused pharmaceuticals to POTWs and/or surface waters. In particular, EPA solicits comment on the extent to which that the Controlled Substances Act (21 U.S.C. 801 *et seq.*) complicates the design of an efficacious solution to drug disposal.

• EPA solicits quantitative information or tracking sheets for the past year on the disposal of unused pharmaceuticals via the toilet, drain, or sewer.

• EPA solicits data on how control authorities are currently controlling disposal of unused pharmaceuticals via wastewater.

• EPA solicits information on any technologies or BMPs that are available to control, reduce, or eliminate the disposal of unused pharmaceuticals to POTWs.

• EPA solicits qualitative and quantitative data on the effectiveness and annualized costs of the technologies or BMPs that health service facilities use to control or eliminate the discharge of unused pharmaceuticals from their wastewater. EPA is also interested in obtaining information on the current costs (including labor) associated with disposal of unused pharmaceuticals via the drain or toilet.

• EPA solicits any studies or information on the potential for unused pharmaceuticals that are disposed of in non-hazardous-waste landfills to contaminate underground resources of drinking water.

EPA will need to gather more technical and economic information on unused pharmaceutical management in the Health Services Industry. To aid its decision-making, EPA intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for their review and approval under the Paperwork Reduction Act (PRA), 33 U.S.C. 3501, *et seq.*, in the 2009 annual review. EPA will use this ICR to collect technical and economic information on unused pharmaceutical management and identify technologies and BMPs that reduce or eliminate the discharge of unused pharmaceuticals to POTWs. In designing this industry survey EPA expects to work closely with industry representatives and other affected stakeholders. EPA has published a separate **Federal Register** notice for this ICR and solicits comment on the potential scope of this ICR (*see* August 12, 2008; 73 FR 46903).

D. Preliminary Category Reviews for the 2008 Annual Review

EPA requests information on the Ore Mining and Dressing category for which it is continuing a preliminary category review (*i.e.*, industrial point source

categories with existing effluent guidelines identified with ''(5)'' in the column entitled ''Findings'' in Table V–1 in section V.B.4 of today's notice). EPA will need to collect more information for the 2009 annual review. Specifically, EPA hopes to gather the following information:

- What toxic pollutants are discharged from this industry in non-trivial amounts on an industry and per-facility basis?
- What raw material(s) or process(es) are the sources of these pollutants?
- What technologies or management practices are available (technically and economically) to control or prevent the generation and/or release of these pollutants.

E. Data Sources and Methodologies

EPA solicits comments on whether EPA used the correct evaluation factors, criteria, and data sources in conducting its annual review and developing this final Plan. EPA also solicits comment on other data sources EPA can use in its annual reviews and biennial planning process. Please see the docket for a more detailed discussion of EPA's analysis supporting the reviews in this notice (*see* DCN 05515).

F. BPJ Permit-Based Support

EPA solicits comments on whether, and if so, how the Agency should provide EPA Regions and States with permit-based support instead of revising effluent guidelines (*e.g.*, when the vast majority of the hazard is associated with one or a few facilities). EPA solicits comment on categories for which the Agency should provide permit-based support.

G. Implementation Issues Related to Existing Effluent Guidelines and Pretreatment Standards

As a factor in its decision-making, EPA considers opportunities to eliminate inefficiencies or impediments to pollution prevention or technological innovation, or opportunities to promote innovative approaches such as water quality trading, including within-plant trading. Consequently, EPA solicits comment on implementation issues related to existing effluent guidelines and pretreatment standards.

H. EPA's Evaluation of Categories of Indirect Dischargers Without Categorical Pretreatment Standards To Identify Potential New Categories for Pretreatment Standards

EPA solicits comments on its evaluation of categories of indirect dischargers without categorical pretreatment standards. Specifically, EPA solicits wastewater characterization data (*e.g.*, wastewater volumes, concentrations of discharged pollutants), current examples of pollution prevention, treatment technologies, and local limits for all industries without pretreatment standards. EPA also solicits comment on whether there are industrial sectors discharging pollutants that cause interference issues that cannot be adequately controlled through the general pretreatment standards. Finally, EPA solicits comment on how better to access and aggregate discharge data reported to local pretreatment programs. Currently, pollutant discharge data are collected by the local pretreatment program to demonstrate compliance with pretreatment standards and local limits but are not typically electronically transmitted to the States or EPA Regions.

I. Industrial Water Conservation, Reuse and Recycling Technology Transfer

EPA requests data to evaluate the costs, benefits, and impacts of industrial water conservation practices. In particular, EPA solicits the following industrial sector or facility level data on water re-use and reduction technologies and pollution prevention practices:

- The main reasons why these technologies and practices were adopted (*e.g.*, limitations to source water, increased water purchasing or treatment costs), and whether these technologies and practices are transferable to other facilities.

Notice of Final 2008 Effluent Guidelines Program Plan

- Descriptions of the water conservation technologies and practices employed at industrial unit operations; wastewater flow and pollutant data; and descriptions of the extent to which these water conservation technologies and practices reduce the amount of wastewater volume, the mass of wastewater pollutants resulting from an industrial unit operation, or both.
- Detailed descriptions of the wastewater treatment and the annual costs of operating wastewater treatment to maintain compliance with the facility's effluent limits.
- Detailed descriptions of the capital and annual costs associated with implementing water conservation technologies and practices and any cost savings resulting from water conservation technologies and practices.

Additionally, EPA solicits estimates of the amount of increased water conservation and the number of facilities that will likely adopt more advanced water conservation technologies and practices over the next five years as a result of limitations on water source availability or potential costs savings.

Dated: September 5, 2008.

Benjamin H. Grumbles,

Assistant Administrator for Water.

[FR Doc. E8–21484 Filed 9–12–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2008–0649; FRL–8715–6]

Board of Scientific Counselors (BOSC), Human Health Subcommittee Meetings—Fall 2008 and Winter 2009

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of three meetings of the Board of Scientific Counselors (BOSC) Human Health Subcommittee.

DATES: The first meeting (a teleconference call) will be held on Friday, October 10, 2008, from 12:30 p.m. to 2:30 p.m. EDT. The second meeting (a teleconference call) will be held on Monday, December 1, 2008, from 11 a.m. to 2 p.m. EST. The third meeting (face-to-face) will begin on Tuesday, January 13, 2009 and conclude on Thursday, January 15, 2009. The meetings may adjourn early if all business is finished. Requests for the draft agendas or for making oral presentations at the meetings will be accepted up to one business day before each meeting.

ADDRESSES: The face-to-face meeting will be held at the EPA's RTP Main Campus Facility, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina 27711. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2008–0649, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov*, Attention Docket ID No. EPA–HQ–ORD–2008–0649.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2008–0649.
- *Mail:* Send comments by mail to: Board of Scientific Counselors (BOSC), Human Health Subcommittee

Meetings—Fall 2008 and Winter 2009 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2008–0649.

• *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2008–0649.

Note: This is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2008–0649. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Board of Scientific Counselors (BOSC), Human Health Subcommittee Meetings—Fall 2008 and Winter 2009 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Heather Drumm, Mail Code 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564–8239; via fax at: (202) 565–2911; or via e-mail at: *drumm.heather@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at any of the meetings may contact Heather Drumm, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the first teleconference include, but are not limited to: Overview of materials provided to the subcommittee; Overview of ORD; Overview of ORD's Human Health Program; Subcommittee discussion. Proposed agenda items for the second teleconference include, but are not limited to: Overviews of each of the four Long Term Goals for the Human Health Research Program. Proposed agenda items for the face-to-face meeting include, but are not limited to: Overviews, poster sessions and client testimonials for each of the long term goals; Subcommittee discussions. The meetings are open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Heather Drumm at (202) 564–8239 or *drumm.heather@epa.gov.* To request accommodation of a disability, please contact Heather Drumm, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: September 4, 2008.

Fred Hauchman,

Director, Office of Science Policy.

[FR Doc. E8–21462 Filed 9–12–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8715–9]

Science Advisory Board Staff Office; Clean Air Scientific Advisory Committee (CASAC); NO_X & SO_X Secondary NAAQS Review Panel Meeting and Teleconference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting of the Clean Air Scientific Advisory Committee Oxides of Nitrogen (NO_X) and Sulfur Oxides (SO_X) Secondary National Ambient Air Quality Standards (NAAQS) Review Panel (CASAC Panel) to peer review EPA's *Integrated Science Assessment for Oxides of Nitrogen and Sulfur—Environmental Criteria (Second External Review Draft) (EPA/600/R–08/082)* and EPA's *Risk and Exposure Assessment for Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur: First Draft (EPA–452/P–08–005a).* The chartered CASAC will review and approve the Panel's reports by public teleconference.

DATES: The CASAC Panel will meet from 8:30 a.m. Wednesday, October 1, 2008 through 3 p.m. Thursday, October 2, 2008 (Eastern Time). The chartered CASAC will meet by public teleconference from 1 p.m. to 3 p.m. on October 30, 2008 (Eastern Time).

ADDRESSES: The October 1–2, 2008 public meeting will take place at the Marriott at Research Triangle Park, 4700 Guardian Drive, Durham, NC 27703, telephone (919) 941–6200. The October 30, 2008 public teleconference will be conducted by phone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the October 1–2, 2008 meeting may contact Ms. Kyndall Barry, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 343–9868; fax (202) 233–0643; or e-mail at *barry.kyndall@epa.gov.* For information

on the CASAC teleconference on October 30, 2008, please contact Mr. Fred Butterfield, Designated Federal Officer (DFO), at the above listed address; via telephone/voice mail (202) 343–9994 or e-mail at *butterfield.fred@epa.gov.* General information concerning the CASAC can be found on the EPA Web site at *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION:

Background: The Clean Air Scientific Advisory Committee (CASAC) was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. CASAC provides advice, information and recommendations on the scientific and technical aspects of air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. The Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six ''criteria'' air pollutants, including NO_X and SO_X. EPA is in the process of reviewing the secondary NAAQS for NO_X and SO_X. Welfare effects as defined in the CAA includes, but is not limited to, effects on soils, water, wildlife, vegetation, visibility, weather, and climate, as well as effects on materials, economic values, and personal comfort and well-being. As part of that process, EPA's Office of Research and Development (ORD) issued the *Draft Integrated Science Assessment fox Oxides of Nitrogen and Sulfur—Environmental Criteria* (ISA) in December 2007 and recently issued the second draft ISA in August 2008. EPA's Office of Air and Radiation (OAR) released its Scope and Methods Plan for Risk/Exposure Assessment (REA) in March 2008. OAR completed the first draft REA in August 2008. The CASAC reviewed the first draft ISA and provided consultative advice on the Scope and Methods plan on April 1–2, 2008. The CASAC's reports to the Administrator can be found on the SAB Web site at *http://www.epa.gov/casac* (*see* EPA–CASAC–08–011 and EPA–CASAC–08–012 both dated May 19, 2008).

The purpose of the October 1–2, 2008 meeting is for the CASAC Panel to conduct a peer review of the second draft ISA and the first draft REA. The chartered CASAC will review and approve the Panel's draft reports on the ISA and REA by public conference call on October 30, 2008.

Technical Contacts: Any questions concerning EPA's *Integrated Science Assessment for Oxides of Nitrogen and Sulfur—Environmental Criteria (Second External Review Draft)* should be directed to Dr. Tara Greaver, ORD, at (919) 541–2435 or *greaver.tara@epa.gov.* Any questions concerning EPA's *Risk and Exposure Assessment for Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur: First Draft* should be directed to Dr. Anne Rea, OAR, at (919) 541–0053 or *rea.anne@epa.gov.*

Availability of Meeting Materials: EPA–ORD's *Integrated Science Assessment for Oxides of Nitrogen and Sulfur—Environmental Criteria (Second External Review Draft)* can be accessed at *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=198220.* EPA–OAR's *Scope and Methods Plan for Risk/Exposure Assessment: Secondary NAAQS Review for Oxides of Nitrogen and Oxides of Sulfur* can be accessed at *http://www.epa.gov/ttn/naaqs/standards/no2so2sec/cr_pd.html.* The agenda and other materials for the CASAC meetings will be posted on the SAB Web site at *http://www.epa.gov/casac.*

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for consideration on the topics included in this advisory activity. *Oral Statements:* To be placed on the public speaker list for the October 1–2, 2008 meeting, interested parties should notify Ms. Kyndall Barry, DFO, by e-mail no later than September 24, 2008. To be placed on the public speaker list for the October 30, 2008 teleconference, interested parties should notify Mr. Fred Butterfield, DFO, by e-mail no later than October 23, 2008. Oral presentations will be limited to one-half hour for all speakers. *Written Statements:* Written statements for the October 1–2, 2008 meeting should be received in the SAB Staff Office by September 24, 2008, so that the information may be made available to the CASAC Panel for its consideration prior to this meeting. For the teleconference meeting of the chartered CASAC on October 30, 2008, statements should be received in the SAB Staff Office by October 23, 2008. Written statements should be supplied to the appropriate DFO in the following formats: one hard copy with original signature and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Ms. Barry at the phone number or e-mail address noted above, preferably at least ten days prior to the face-to-face meeting, to give EPA as much time as possible to process your request.

Dated: September 8, 2008.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E8–21492 Filed 9–12–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8716–4]

National Drinking Water Advisory Council: Request for Nominations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) invites all interested persons to nominate qualified individuals to serve a three-year term as members of the National Drinking Water Advisory Council (Council). This 15-member Council was established by the Safe Drinking Water Act (SDWA) to provide practical and independent advice, consultation, and recommendations to the Agency on the activities, functions, policies, and regulations required by the SDWA. The terms of five (5) members expire in December 2008. To maintain the representation required in the statute, nominees for the 2009 Council should represent State and local officials concerned with public water supply and public health protection (1 vacancy), the general public (2 vacancies) and interest groups (2 vacancies), with at least one of these vacancies representing small systems. All nominations will be fully considered, but applicants need to be aware of the specific representation needed as well as geographical balance so that all major areas of the U.S. (East, Mid-West, South, Mountain, South-West, and West) will be represented. The current list of members is available on the EPA Web site at *http://www.epa.gov/safewater/ndwac.*

DATES: Submit nominations via U.S. mail on or before October 19, 2008.

ADDRESSES: Address all nominations to Veronica Blette, Designated Federal Officer, National Drinking Water

Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (Mail Code 4601–M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: E-mail your questions to Jacquelyn Springer, Designated Federal Officer, *springer.jacquelyn@epa.gov* or call 202–564–9904.

SUPPLEMENTARY INFORMATION: *National Drinking Water Advisory Council:* The Council consists of 15 members, including a Chairperson, appointed by the Deputy Administrator. Five members represent the general public; five members represent appropriate State and local agencies concerned with public water supply and public health protection; and five members represent private organizations or groups demonstrating an active interest in the field of public water supply and public health protection. The SDWA requires that at least two members of the Council represent small, rural public water systems. Additionally, members may be asked to serve on one of the Council's workgroups that are established on an as-needed basis to assist EPA in addressing specific program issues. On December 15 of each year, some members complete their appointment. Therefore, this notice solicits nominations to fill five vacancies with terms ending on December 15, 2011.

Persons selected for membership will receive compensation for travel and a nominal daily compensation (if appropriate) while attending meetings. The Council holds two face-to-face meetings each year, generally in the spring and fall. Conference calls will be scheduled if needed.

Nomination of a Member: Any interested person or organization may nominate qualified individuals for membership. Self-nominations are also welcome. Nominees should be identified by name, occupation, position, address and telephone number. To be considered, all nominations must include a current resume, providing the nominee's background, experience and qualifications.

Dated: September 9, 2008.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. E8–21459 Filed 9–12–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0662; FRL–8381–3]

Pesticide Registration Review; New Dockets Opened for Review and Comment; Closure of the Fenamiphos Registration Review Case

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established registration review dockets for the pesticides listed in the table in Unit III.A. With this document, EPA is opening the public comment period for these registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment. This document also announces the Agency's intent not to open a registration review docket for fenaminphos. This pesticide does not currently have any actively registered pesticide products and is not, therefore, scheduled for review under the registration review program.

DATES: Comments must be received on or before December 17, 2008.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

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

Instructions: Direct your comments to the docket ID numbers listed in the table in Unit III.A. for the pesticides you are commenting on. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although, listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information contact*: The Chemical Review Manager identified in the table in Unit III.A. for the pesticide of interest.

For general information contact: Kevin Costello, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; e-mail address: *costello.kevin @epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA section 3(a), a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What Action is the Agency Taking?

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations identified in the table in this unit to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table.

TABLE—REGISTRATION REVIEW DOCKETS OPENING

Registration Review Case Name and Number	Docket ID Number	Chemical Review Manager, Telephone Number, E-mail Address
Trinexapac-ethyl Case #7228	EPA–HQ–OPP–2008–0687	Kylie Rothwell, (703) 308–8055, *rothwell.kylie*@epa.gov
Clethodim Case #7226	EPA–HQ–OPP–2008–0658	Kelly Ballard, (703) 305–8126, *ballard.kelly*@epa.gov
Flumetsulam Case # 7229	EPA–HQ–OPP–2008–0625	Malanie Biscoe, (703) 305–7106, *biscoe.melanie*@epa.gov

TABLE—REGISTRATION REVIEW DOCKETS OPENING—Continued

Registration Review Case Name and Number	Docket ID Number	Chemical Review Manager, Telephone Number, E-mail Address
Soap salts Case # 4083	EPA–HQ–OPP–2008–0519	Monica Wait, (703) 347–8019, *wait.monica*@epa.gov
Flutolnil	EPA–HQ–OPP–2008–0148	Jill Bloom, (703) 308–7070, *bloom, jill*@epa.gov

The Agency is also announcing that it will not conduct a registration review for fenamiphos (registration review case 333). In October 2006, the Agency issued schedules for upcoming registration reviews and included fenamiphos as one of the pesticides scheduled for registration review. Since first identifying fenamiphos as a Registration Review pesticide, the Agency has determined that there are no current fenamiphos Section 3 or Section 24(c) registrations. Therefore, the Agency has determined that fenamiphos is no longer subject to registration review. A Registration Review docket will not be opened for fenamiphos and the fenamiphos registration review case has been closed pursuant to 40 CFR 155.42(c).

B. Docket Content

1. *Review dockets*. The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information*. More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's website at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm*.. Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review*.

3. *Information submission requirements*. Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.
- As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 4, 2008.

Peter Caulkins,

Acting Director, Special Review and Registration Division, Office of Pesticide Programs.

[FR Doc. E8–21482 Filed 9–12–08; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–OW–FRL–8715–3]

Revision of National Recommended Water Quality Criteria for Acrolein and Phenol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of updated draft criteria and request for scientific views.

SUMMARY: Pursuant to section 304(a) of the Clean Water Act (CWA), the Environmental Protection Agency (EPA) is announcing the revision and availability of draft updated national recommended water quality criteria for the protection of human health for acrolein and phenol. The draft criteria are partial updates based on EPA's *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000)*, EPA–822–B–00–004 (2000 Human Health Methodology) and will supersede previously published criteria when final. EPA's recommended section 304(a) water quality criteria provide guidance to States and authorized Tribes in adopting water quality standards for protecting human health and provide guidance to EPA for promulgating Federal regulations under CWA section 303(c), when such action is necessary.

DATES: Scientific views must be received on or before October 30, 2008.

Comments postmarked after this date may not be considered.

ADDRESSES: Submit your scientific views, identified by Docket ID No. EPA–HQ–OW–2008–0553, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail*: *OW–Docket@epa.gov*.
- *Mail*: U.S. Environmental Protection Agency; EPA Docket Center (EPA/DC) Water Docket, MC 2822T; 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery*: EPA Docket Center, 1301 Constitution Ave., NW., EPA West, Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2008–0553. 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 information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Office of Water Docket/EPA/DC, 1301 Constitution Ave., NW., EPA West, Room 3334, Washington, DC. This Docket Facility is open from 8:30 a.m. until 4:30 p.m., EST, Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Water is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Heidi L. Bethel, Health and Ecological Criteria Division (4304T), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460; (202) 566–2054; *bethel.heidi@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What Are Water Quality Criteria?

Water quality criteria are scientifically derived numeric values that protect aquatic life or human health from the deleterious effects of pollutants in ambient water.

Section 304(a)(1) of the Clean Water Act requires EPA to develop and publish and, from time to time, revise, criteria for water quality accurately reflecting the latest scientific knowledge. Water quality criteria developed under section 304(a) are based solely on data and scientific judgments on the relationship between pollutant concentrations and environmental and human health effects. Section 304(a) criteria do not reflect consideration of economic impacts or the technological feasibility of meeting the chemical concentrations in ambient water.

Section 304(a) criteria provide guidance to States and authorized Tribes in adopting water quality standards that ultimately provide a basis for controlling discharges or releases of pollutants. The criteria also provide guidance to EPA when promulgating federal regulations under section 303(c) when such action is necessary. Under the CWA and its implementing regulations, States and authorized Tribes are to adopt water quality criteria to protect designated uses (*e.g.*, public water supply, recreational use, industrial use). EPA's recommended human health water quality criteria do not substitute for the CWA or regulations, nor are they regulations themselves. Thus, EPA's recommended criteria do not impose legally binding requirements. States and authorized Tribes have the discretion to adopt, where appropriate, other scientifically defensible water quality standards that differ from these recommendations.

II. What Are the Criteria Revisions?

EPA is today publishing an update of national recommended water quality criteria (NRWQC) for protecting human health for acrolein and phenol. These draft revisions are based on EPA's *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* (2000), EPA–822–B–00–004 (2000 Human Health Methodology). This methodology describes the Agency's current approach for deriving national recommended water quality criteria to protect human health.

The draft revision of these criteria represents a partial update of the 304(a) criteria as described in both the draft Methodology revisions and the **Federal Register** Notice that accompanied the 2000 Human Health Methodology (65 FR 66444; November 3, 2000). EPA believes that updating a limited number of components for which there are available data or improved science (i.e., a partial update) is a reasonable and efficient means of publishing revised 304(a) criteria more frequently. EPA has also previously described its process for publishing revised criteria [see *National Recommended Water Quality Criteria; Notice; Republication* (63 FR 68354; December 10, 1998 or EPA 822–Z–99–001) and *National Recommended Water Quality Criteria; Notice; Republication; Correction* (64 FR 19781; April 22, 1999) or the **Federal Register** Notice for the 2000 Methodology]. EPA indicated that when making minor revisions to existing criteria based on new information pertaining to individual components of the criteria, it would typically publish the recalculated criteria directly as the Agency's national recommended water quality criteria.

The draft criteria for acrolein and phenol are being updated with reference dose (RfD) values from EPA's Integrated Risk Information System (IRIS) (*http://www.epa.gov/iris*). Because recalculation of these two criteria results in significant changes, EPA is publishing them in today's Notice in order to solicit scientific views. However, EPA does not intend to subject this recalculation to additional peer review because the IRIS reference doses being updated in this draft partial criteria update have been previously peer reviewed.

Tables 1 and 2 below containing the current and updated draft criteria for acrolein and phenol were prepared to assist reviewers. The RfD values used to derive the respective criteria values are also included in Tables 1 and 2 below.

TABLE 1—UPDATED DRAFT CRITERIA FOR ACROLEIN

Acrolein	Current criteria	Updated draft criteria
IRIS RfD	0.0156 mg/(kg-d) (published 1977)	0.0005 mg/(kg-d) (published 6/03) (*http://www.epa.gov/ncea/iris/subst/0364.htm*).
Water + Organisms	190 µg/l	6 µg/l
Organisms Only	290 µg/l	9 µg/l.

TABLE 2—UPDATED DRAFT CRITERIA FOR PHENOL

Phenol	Current criteria	Updated draft criteria
IRIS RfD	0.60 mg/(kg-d) (published 2/90)	0.30 mg/(kg-d) (published 9/02) (*http://www.epa.gov/ncea/iris/subst/0088.htm*).
Water + Organisms	20,700 µg/l	10,400 µg/l.
Organisms Only	1,700,000 µg/l	857,000 µg/l.

EPA decided to revise the existing criteria based on partially updated components of the criteria equations in order to increase the frequency of scientific improvements to the nationally recommended criteria using acceptable, currently-available information. For a water quality criterion revision based on a partial update to be considered acceptable to EPA, a component of the criterion (*e.g.*, the toxicological risk assessment) should be comprehensive (*e.g.*, a new or revised reference dose (RfD)) or cancer dose-response assessment, as opposed to simply a new scaling factor), stand alone, and be based on new national or local data. The criteria for phenol and acrolein are being updated with more recent reference doses available from EPA's Integrated Risk Information System (IRIS). IRIS is an electronic data base maintained by the EPA that provides chemical-specific risk information on the relationship between chemical exposures and estimated human health effects. Risk assessment information contained in IRIS, except as specifically noted, has been reviewed and agreed upon by an interdisciplinary group of scientists representing various Program Offices within the Agency and represents Agency-wide consensus. Therefore, updated IRIS values reflect the most current Agency science and should be used by States and Tribes in updating or developing new human health criteria. The Office of Science and Technology will publish these partial updates of water quality criteria via their Water Science Web Site (*http://www.epa.gov/waterscience*).

IV. What Is the Relationship Between the Water Quality Criteria and Your State or Tribal Water Quality Standards?

As part of the water quality standards triennial review process defined in Section 303(c)(1) of the CWA, the States and authorized Tribes are responsible for maintaining and revising water quality standards. Water quality standards consist of designated uses, water quality criteria to protect those uses, a policy for antidegradation, and general policies for application and implementation. Section 303(c)(1) requires States and authorized Tribes to review and modify, if appropriate, their water quality standards at least once every three years.

States and authorized Tribes must adopt water quality criteria that protect designated uses. Protective criteria are based on a sound scientific rationale and contain sufficient parameters or constituents to protect the designated uses.

Consistent with 40 CFR131.21 [see: *EPA Review and Approval of State and Tribal Water Quality Standards* (65 FR 24641, April 27, 2000)], water quality criteria adopted by law or regulation by States and authorized Tribes prior to May 30, 2000, are in effect for CWA purposes unless superseded by federal regulations (see, for example, the *National Toxics Rule,* 40 CFR 131.36; *Water Quality Standards for Idaho,* 40 CFR 131.33). New or revised water quality criteria adopted into law or regulation by States and authorized Tribes on or after May 30, 2000 are in effect for CWA purposes only after EPA approval.

V. What Is the Status of Existing Recommended Criteria While They Are Under Revision?

Water quality criteria published by EPA remain the Agency's recommended water quality criteria until EPA revises or withdraws the criteria. The current criteria for acrolein and phenol will remain in effect until EPA publishes the updated criteria.

VI. Where Can I Find More Information About Water Quality Criteria and Water Quality Standards?

For more information about water quality criteria and Water Quality Standards refer to the following: *Water Quality Standards Handbook (EPA 823–B94–005a); Advanced Notice of Proposed Rule Making (ANPRM), (63 FR 36742); Water Quality Criteria and Standards Plan—Priorities for the Future (EPA 822–R–98–003); Guidelines and Methodologies Used in the Preparation of Health Effects Assessment Chapters of the Consent Decree Water Criteria Documents* (45 FR 79347); *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000),* (EPA–822–B–00–004); *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses* (EPA 822/R–85–100); *National Strategy for the Development of Regional Nutrient Criteria* (EPA 822–R–98–002); and *EPA Review and Approval of State and Tribal Water Quality Standards* (65 FR 24641).

You can find these publications through EPA's National Service Center for Environmental Publications (NSCEP, previously NCEPI) or on the Office of Science and Technology's Home-page (*http://www.epa.gov/waterscience*).

Dated: August 28, 2008.

Ephraim S. King,

Director, Office of Science and Technology.

[FR Doc. E8–21460 Filed 9–12–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, September 16, 2008, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to section 552b(c)(2), (c)(4), (c)(6), (c)(8), (9)(A)(ii), and (9)(B) of Title 5, United States Code, to consider matters relating to the Corporation's supervisory and corporate activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7122.

Dated: September 9, 2008.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E8–21395 Filed 9–12–08; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, September 16, 2008, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors

Memorandum and resolution re: Final Rule: Financial Education Programs that Include the Provision of Bank Products and Services

Memorandum and resolution re: Final Amendments to the FDIC Rules and Regulations Due to the Financial Services Regulatory Relief Act of 2006

Memorandum and resolution re: Final Amendments to the Guidelines for Appeals of Material Supervisory Determinations

Discussion Agenda:

Memorandum and resolution re: Interagency Notice of Proposed Rulemaking on Capital Adequacy: Deduction of Goodwill Net of Associated Deferred Tax Liabilities

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

This Board meeting will be Webcast live via the Internet at: *http://www.vodium.com/goto/fdic/boardmeetings.asp.* This service is free and available to anyone with the following systems requirements: *http://www.vodium.com/home/sysreq.html* (*http://www.vodium.com*). Adobe Flash Player is required to view these presentations. The latest version of Adobe Flash Player can be downloaded at *http://www.macromedia.com/go/getflashplayer.* Installation questions or troubleshooting help can be found at the same link. For optimal viewing, a high speed Internet connection is recommended. The Board meetings videos are made available on-demand approximately one week after the event.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7122.

Dated: September 9, 2008.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E8–21396 Filed 9–12–08; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL LABOR RELATIONS AUTHORITY

Membership of the Federal Labor Relations Authority's Senior Executive Service Performance Review Board.

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: Notice is hereby given of the members of the Performance Review Board.

DATES: September 15, 2008.

FOR FURTHER INFORMATION CONTACT: Catherine V. Emerson, Acting Executive Director, Federal Labor Relations Authority (FLRA); 1400 K Street, NW., Washington, DC 20424–0001; (202) 218–7945.

SUPPLEMENTARY INFORMATION: Section 4314(c) of Title 5, U.S.C. (as amended by the Civil Service Reform Act of 1978) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards (PRB). Section 4314(c)(4) requires that notice of appointment of the PRB be published in the **Federal Register**.

As required by 5 CFR 430.310, the following executives have been appointed to serve on the 2008–2009 PRB for the FLRA, beginning September 2008 through September 2009:

Marcia Eugenio, Director, Office of Child Labor, Forced Labor & Human Trafficking, Bureau of International Labor Affairs, Department of Labor;

Bill Spencer, Clerk of the Board, Merit Systems Protection Board;

Rosa Koppel, Solicitor, Federal Labor Relations Authority;

Catherine Emerson, Acting Executive Director, Federal Labor Relations Authority.

Authority: 5 U.S.C. 4134(c)(4).

Dated: September 9, 2008.

Catherine V. Emerson,

Acting Executive Director.

[FR Doc. E8–21437 Filed 9–12–08; 8:45 am]

BILLING CODE 6727–01–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 29, 2008.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Leslie D. Ligon, Jr., Clinton, Louisiana; to acquire additional shares of Clinton Bancshares, Inc., and thereby acquire shares of Landmark Bank, both of Clinton, Louisiana.

Board of Governors of the Federal Reserve System, September 10, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–21451 Filed 9–12–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 10, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. PrivateBancorp, Inc., Chicago, Illinois; to acquire 100 percent of the voting shares of The PrivateWealth Trust Company, a federal savings bank (in organization), Chicago, Illinois, and thereby engage in operating a savings bank pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, September 10, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–21452 Filed 9–12–08; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Office of Small Business Utilization; Small Business Advisory Committee;

Notice of Request for Nominations for Subcommittee on Service Disabled Veteran Owned Small Business (SDVOSB), GSA Small Business Advisory Committee

AGENCY: Office of Small Business Utilization, GSA.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) is requesting the public to submit nominations of individuals for the Service Disabled Veteran Owned Small Business Subcommittee of the GSA Small Business Advisory Committee as a part of GSA's initiative to meet and exceed its three percent contracting goal for Service-Disabled Veteran-Owned Small Businesses.

DATES: Interested parties should submit the nomination form on or before September 30, 2008.

ADDRESSES: The nomination form is available at *http://www.gsa.gov/service-disabled* and should be submitted to *sbac@gsa.gov*. When submitting a nomination via email, please put ''SDVOSB Subcommittee nomination'' in the subject line. Nominations may also be sent by mail to: General Services Administration, Small Business Advisory Committee, 1800 F Street NW, Room 6029, Washington, DC 20405.

Those wishing to send the nominations by fax may do so using (202) 501–2590.

FOR FURTHER INFORMATION CONTACT Aaron Collmann, Room 6029, GSA Building, 1800 F Street, NW., Washington, DC 20405 (202) 501–1021 or email at *sbac@gsa.gov*.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463). The purpose of this subcommittee is to advise GSA in issues pertaining to Service Disabled Veteran Owned Small Businesses (SDVOSB's) as outlined in Gun number 2 (Advocacy) of GSA's 21 Gun Salute initiative for SDVOSB's. Information on the 21 Gun Salute can be found at *http://www.gsa.gov/service-disabled*. Please note that nominees who are selected and agree to serve may be asked to complete a financial disclosure form.

Dated: September 9, 2008.

Michael Rigas,

Deputy Associate Administrator, Office of Small Business Utilization, General Services Administration.

[FR Doc. E8–21455 Filed 9–12–08; 8:45 am]

BILLING CODE 6820–34–S

OFFICE OF GOVERNMENT ETHICS

Updated OGE Senior Executive Service Performance Review Board

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of the members of the updated OGE Senior Executive Service (SES) Performance Review Board.

DATES: *Effective Date: September 15, 2008.*

FOR FURTHER INFORMATION CONTACT: Joseph E. Gangloff, Deputy Director for Agency Programs, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917; Telephone: 202–482–9300; TDD: 202–482–9293; FAX: 202–482–9238.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management at 5 CFR part 430, subpart C and § 430.310 thereof in particular, one or more Senior Executive Service performance review boards. As a small executive branch agency, OGE has just one board. In order to ensure an adequate level of staffing and to avoid a constant series of recusals, the designated members of OGE's SES Performance Review Board are being drawn, as in the past, in large measure from the ranks of other agencies. The board shall review and evaluate the initial appraisal of each OGE senior executive's performance by his or her supervisor, along with any recommendations in each instance to the appointing authority relative to the performance of the senior executive. This notice updates the membership of

OGE's SES Performance Review Board as it was most recently published at 72 FR 54666–54667 (September 26, 2007).

Approved: September 9, 2008.

Robert I. Cusick,

Director, Office of Government Ethics.

The following officials have been appointed as regular members of the SES Performance Review Board of the Office of Government Ethics:

Joseph E. Gangloff [Chair], Deputy Director for Agency Programs, Office of Government Ethics;

Don W. Fox [Alternate Chair], General Counsel, Office of Government Ethics;

Daniel L. Koffsky, Special Counsel, Office of Legal Counsel, Department of Justice;

David Maggi, Chief, Ethics Law and Programs Division, Office of the Assistant General Counsel for Administration, Department of Commerce; and

Robert A. Shapiro, Associate Solicitor for Legal Counsel, Department of Labor.

[FR Doc. E8–21447 Filed 9–12–08; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0434] (formerly Docket No. 2007D–0386)

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Postmarketing Adverse Event Reporting for Nonprescription Human Drug Products Marketed Without an Approved Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by October 15, 2008.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–NEW and title ''Guidance for Industry on Postmarketing Adverse Event Reporting for Nonprescription Human Drug Products Marketed Without an Approved Application.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3792.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on Postmarketing Adverse Event Reporting for Nonprescription Human Drug Products Marketed Without an Approved Application

Public Law 109–462, the Dietary Supplement and Nonprescription Drug Consumer Protection Act, amended the Federal Food, Drug, and Cosmetic Act (the act) to add safety reporting requirements for nonprescription drug products that are marketed without an approved application. In accordance with section 760(b) of the act (21 U.S.C. 379aa), the manufacturer, packer, or distributor whose name appears on the label of a nonprescription drug marketed in the United States without an approved application (referred to as the responsible person) must submit to FDA any report of a serious adverse event associated with such drug when used in the United States, accompanied by a copy of the label on or within the retail package of such drug. In addition, the responsible person must submit followup reports of new medical information related to a submitted serious adverse event report that is received within 1 year of the initial report (section 760(c)(2) of the act). Section 760(e) of the act also requires that responsible persons maintain records of nonprescription drug adverse event reports, whether or not the event is serious, for a period of 6 years. The guidance document provides information on: (1) The minimum data elements that should be included in a serious adverse event report, (2) the label that should be included with the report, (3) reporting formats for paper and electronic submissions, and (4) how and where to submit the reports.

Title: Guidance for Industry on Postmarketing Adverse Event Reporting for Nonprescription Human Drug Products Marketed Without an Approved Application.

Description of Respondents: Respondents to this collection of information are manufacturers, packers, or distributors whose name appears on the label of a nonprescription drug marketed in the United States without an approved application.

Burden Estimate: FDA is requesting public comment on estimates of the number of annual submissions from these respondents and recordkeeping, as required by Public Law 109–462 and described in the guidance ''Postmarketing Adverse Event Reporting for Nonprescription Human Drug Products Marketed Without an Approved Application.'' The estimates for annual reporting and recordkeeping are based on FDA's knowledge of adverse drug experience reports historically submitted annually for prescription drug products and for nonprescription drug products marketed under an approved application, including knowledge about the time needed to prepare the reports and to maintain records.

FDA receives approximately 2,500 serious adverse event reports for nonprescription drug products marketed under approved applications, which comprise approximately 20 percent of the overall nonprescription drug market. Based on this data, we estimate between 10,000 and 15,000 (i.e., 12,500) total annual responses from approximately 50 respondents for nonprescription drugs marketed without an approved application, and that each submission will take approximately 2 hours to prepare and submit to FDA.

In the **Federal Register** of October 15, 2007 (72 FR 58316), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received on the information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours Per Response	Total Hours
Reports of serious adverse drug events (21 U.S.C. 379aa((b) and (c))	50	250	12,500	2	25,000
Total					25,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The guidance also recommends that responsible persons maintain records of efforts to obtain the minimum data elements for a report of a serious adverse drug event and any followup reports. Although the guidance document does not provide recommendations on all the recordkeeping activities required under section 760(e) of the act, we are providing an estimate for this burden. Historically, serious adverse event reports comprise approximately two-thirds, and nonserious adverse event reports comprise approximately one-third, of the total number of postmarketing adverse event reports associated with drugs and biologic therapeutics (except vaccines) received by FDA. Based on this generalization, we estimate the total annual records to be approximately 20,000 records per year, and the number of respondents to be approximately 200. We also estimate that it takes approximately 5 hours to maintain each record.

TABLE 2.— ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours Per Record	Total Hours
Recordkeeping (21 U.S.C. 379aa(e)(1))	200	100	20,000	5	100,000
Total					100,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Therefore, the estimated annual reporting burden for this information collection is 25,000 hours and the estimated annual recordkeeping burden is 100,000 hours.

Dated: September 8, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–21345 Filed 9–12–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0372] (formerly Docket No. 2007D–0388)

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by October 15, 2008.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–NEW and title, ''Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act—(OMB Control Number 0910–NEW)

Description of Respondents: Respondents to this collection of information are manufacturers, packers, and distributors of dietary supplements marketed in the United States.

On December 22, 2006, the President signed into law the Dietary Supplement and Nonprescription Drug Consumer Protection Act (DSNDCPA) (Public Law 109–462, 120 Stat. 3469). This law amends the Federal Food, Drug, and Cosmetic Act (the act) with respect to serious adverse event reporting and recordkeeping for dietary supplements and non-prescription drugs marketed without an approved application.

Under section 761(b)(1) of the act (21 U.S.C. 379aa–1(b)(1)), the manufacturer, packer, or distributor whose name (under section 403(e)(1) of the act (21 U.S.C. 343(e)(1))) appears on the label of a dietary supplement marketed in the United States is required to submit to FDA any serious adverse event report it receives regarding use of the dietary

supplement in the United States, accompanied by a copy of the product label. In addition, under section 761(c)(2) of the act, the submitter of the serious adverse event report (referred to in the statute as the ''responsible person'') is required to submit to FDA a followup report of any related new medical information the responsible person receives within 1 year of the initial report. Under section 761(e)(1) of the act, responsible persons are required to maintain records related to dietary supplement adverse event reports they receive, whether or not the adverse event is serious. These requirements became effective on December 22, 2007.

As required by section 3(d)(3) of the DSNDCPA, FDA is issuing guidance to describe the minimum data elements for serious adverse event reports for dietary supplements. The draft guidance entitled ''Questions and Answers Regarding Adverse Event Reporting and Recordkeeping for Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act,'' was issued October 15, 2007, and is consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance discusses how, when, and where to submit serious adverse event reports for dietary supplements and followup reports of new medical information. In accordance with the statutory requirements that serious adverse event reports for dietary supplements be submitted via MedWatch (section 761(d) of the act) and that FDA consolidate all information related to a serious adverse event into a single report (section 761(c)(3) of the act), the draft guidance directs the responsible person to submit serious adverse event reports on MedWatch Form 3500A and to attach a copy of the initial serious adverse event report on Form 3500A as part of any followup report of new medical information. We are also providing guidance on records maintenance and access for serious and non-serious adverse event reports and related documents.

In the **Federal Register** of October 15, 2007 (72 FR 58313), FDA published a 60-day notice requesting public comment on the information collection provisions. FDA received one comment related to the information collection. The comment disagreed with FDA's proposed estimate of the annual recordkeeping burden associated with dietary supplement adverse events. However, the commenter did not provide an alternative estimate or compelling information that the estimate provided by FDA was not a reasonable upper-bound estimate. Since the receipt of the comment, the mandatory reporting of serious adverse events for dietary supplements to FDA has come into effect (on December 22, 2007). Thus, FDA now has data on mandatory dietary supplement adverse event reports to use in revising our reporting burden estimate. For the first quarter of 2008 (January 1 to April 15), FDA has received 214 mandatory reports of serious adverse events related to dietary supplements. Therefore, FDA revises our annual burden estimate from 960 mandatory reports to 856 mandatory reports of serious adverse events related to dietary supplements. FDA requests comments on this estimate.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Serious adverse event reports for dietary supplements (21 U.S.C. 379aa–1(b)(1))	71.3333	12	856	2	1,712
Followup reports of new medical information (21 U.S.C. 379aa–1(c)(2))	17.83333	12	214	1	214
Total					1,926

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's Center for Drug Evaluation and Research estimates it will take respondents a total of 2 hours to collect information about a serious adverse event associated with an over-the-counter drug marketed without an approved application and report the information to FDA on MedWatch Form 3500A. That time burden estimate is based on FDA's knowledge of the adverse drug experience reports submitted to the agency for nonprescription drug products marketed under an approved application, including knowledge about the time needed to prepare the reports. FDA believes that the time for a dietary supplement firm to collect information about a serious adverse event associated with a dietary supplement and report the information to FDA will be approximately the same, as MedWatch Form 3500A will be used in both cases; therefore, we also estimate this time burden at 2 hours per report. The estimated total annual burden for dietary supplement serious adverse event reports is shown in row 1 of table 1 of this document.

If a firm that has submitted a serious adverse event report receives new medical information related to the serious adverse event within 1 year of submitting the initial report, the firm must provide the new medical information to FDA in a followup report. Given our limited experience with mandatory dietary supplement adverse event reporting, we do not have any information on the number of followup reports of new medical information that will be submitted to FDA each year. We expect followup medical information to be reported for some percentage of the 856 serious adverse event reports we estimate receiving annually. In the absence of data that would support a more precise estimate, we will assume that 25 percent of the 856 serious adverse event reports for dietary supplements will have a followup report submitted. FDA requests comments on this estimate. We estimate that each followup report will require 1 hour to assemble and submit, including the time needed to copy and attach the initial serious adverse event report as recommended in the draft guidance. We assume the followup report will take less time than the initial serious adverse event report, as the responsible person will not need to fill out Form 3500A for the followup report. FDA requests comments on whether the burden estimate of 1 hour is reasonable for this information collection. The

estimated total annual burden for followup reports of new medical information is shown in row 2 of table 1 of this document.

As previously noted, section 761(e)(1) of the act requires that responsible persons maintain records related to dietary supplement adverse event reports they receive, whether or not the adverse event is serious. Under the statute, the records must be retained for a period of 6 years. The draft guidance provides FDA's recommendations as to what records industry should maintain to satisfy the statutory recordkeeping requirement.

The guidance recommends that the responsible person document its attempts to obtain the minimum data elements for a serious adverse event report. Along with these records, the guidance recommends that the responsible person keep the following other records: (1) Communications between the responsible person and the initial reporter of the adverse event and with any other person(s) who provided information about the adverse event; (2) (for serious adverse events only) the responsible person's serious adverse event report to FDA on MedWatch Form 3500A, with attachments; (3) any new medical information about the adverse event received by the responsible person; (4) (for serious adverse events only) any reports to FDA of new medical information related to the serious adverse event report. We estimate that assembling and filing these records, including any necessary photocopying, will take approximately 0.5 hours per adverse event report received by the responsible person.

Once the documents pertaining to an adverse event report have been assembled and filed, FDA expects the records retention burden to be minimal, as the agency believes most establishments would normally keep this kind of record for at least several years after receiving the report, as a matter of usual and customary business practice. FDA requests comment on current adverse event recordkeeping practices in the dietary supplement industry, including the length of time such records are typically kept.

According to a 2001 report by the Office of the Inspector General, between 1994–1999 FDA received 2,547 adverse event reports involving dietary supplements, or about 500 reports per year, on average. According to the report, the actual number of adverse events relating to dietary supplements is likely to be at least 100 times that many, or more than 50,000 adverse events per year. Given that we have limited data on how many adverse events will be reported each year to the responsible person, we are using the 50,000 per year figure as an upper-bound estimate of reporting. This is almost certainly an overestimate of the number of reports the firms will receive, as it is unlikely that every adverse event that occurs will be reported to the responsible person. FDA requests comments on this estimate.

We estimated in the economic impact analysis of the Dietary Supplement Good Manufacturing Practices final rule (the GMP final rule) (72 FR 34752, June 25, 2007) that there are 1,460 manufacturers, packers, and holders of dietary supplements (72 FR 34752 at 34920). We assume that the estimated 50,000 adverse event reports related to dietary supplements will be spread evenly among these firms. The estimate of the number of manufacturers, packers, and holders of dietary supplements from the GMP final rule is FDA's best estimate of the number of firms that are ''responsible persons'' who must comply with the recordkeeping requirements of the DSNDCPA; however, it is not a precise estimate because the number of dietary supplement establishments covered by the GMP final rule is likely to be larger than the number of ''responsible persons,'' where a ''responsible person'' is a dietary supplement manufacturer, packer, or distributor whose name is listed on the label of a dietary supplement marketed in the United States (see section 761(b)(1) of the act). Thus, FDA's estimate for the number of respondents in table 2 may be over inclusive. FDA requests comments on the number of firms that would be subject to the recordkeeping requirements of the DSNDCPA.

The estimated total annual recordkeeping burden under the statute and this guidance is shown in table 2 of this document.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records[2]	Hours per Record	Total Hours
Dietary supplement adverse event records (21 U.S.C. 379aa–1(e)(1))	1,460	4.2465	50,000	0.5	25,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] For purposes of estimating the number of records and hours per record, a ''record'' means all records kept for an individual adverse event report received by the responsible person.

Dated: September 8, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–21454 Filed 9–12–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0480]

Animal Drug User Fee Rates and Payment Procedures for Fiscal Year 2009

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates and payment procedures for fiscal year (FY) 2009 for user fees under the Animal Drug User Fee Act program (ADUFA). The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Animal Drug User Fee Act of 2003 (ADUFA I), and the Animal Drug User Fee Amendments of 2008 (ADUFA II), authorizes FDA to collect user fees for certain animal drug applications, on certain animal drug products, on certain establishments where such products are made, and on certain sponsors of such animal drug applications and/or investigational animal drug

submissions. This notice establishes the fee rates for FY 2009.

For FY 2009, the animal drug user fee rates are: $246,300 for an animal drug application; $123,150 for a supplemental animal drug application for which safety or effectiveness data is required and for an animal drug application subject to certain criteria; $4,925 for an annual product fee; $59,450 for an annual establishment fee; and $52,700 for an annual sponsor fee. FDA will issue invoices for FY 2009 product, establishment, and sponsor fees by December 31, 2008, and these invoices will be due and payable on or before January 31, 2009. FDA will issue invoices in November 2009 for any products, establishments, and sponsors that are subject to fees for FY 2009 but that qualified for fees after the December 2008 billing.

The application fee rates are effective for applications submitted on or after October 1, 2008, and will remain in effect through September 30, 2009. Applications will not be accepted for review until FDA has received full payment of application fees and any other animal drug user fees owed.

FOR FURTHER INFORMATION CONTACT: Visit the FDA Web site at *http://www.fda.gov/oc/adufa* or contact Roxanne Schweitzer, Center for Veterinary Medicine (HFV–10), Food and Drug Administration, 7529 Standish Pl., Rockville, MD 20855, 240–276–9705. For general questions, you may also e-mail the Center for Veterinary Medicine at: *cvmadufa@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 740 of the act (21 U.S.C. 379j–12) establishes four different kinds of user fees: (1) Fees for certain types of animal drug applications and supplements, (2) annual fees for certain animal drug products, (3) annual fees for certain establishments where such products are made, and (4) annual fees for certain sponsors of animal drug applications and/or investigational animal drug submissions (section 740(a) of the act). When certain conditions are met, FDA will waive or reduce fees (section 740(d) of the act).

For FY 2009 through FY 2013, the act establishes aggregate yearly base revenue amounts for each of these fee categories. Base revenue amounts established for years after FY 2009 are subject to adjustment for workload. Fees for applications, products, establishments, and sponsors are to be established each year by FDA so that the revenue for each fee category will approximate the level established in the statute, after the level has been adjusted for workload.

II. Revenue Amount for FY 2009

A. Statutory Fee Revenue Amounts

ADUFA II (Public Law 110–316 signed by the President on August 14, 2008) specifies that the aggregate revenue amount for FY 2009 for each of the four animal drug user fee categories is $3,815,000, before any adjustment for workload is made (see section 740(b)(1) through (b)(4) of the act).

B. Inflation Adjustment to Fee Revenue Amount

Because the amounts established in ADUFA II for each year for FY 2009 through FY 2013 include an inflation adjustment, no further inflation adjustment is required.

C. Workload Adjustment to Fee Revenue Amount

For each FY beginning after FY 2009, ADUFA II provides that statutory fee revenue amounts shall be further adjusted to reflect changes in review workload (section 740(c)(1) of the act). No workload adjustment is to be made in fee revenue amounts for FY 2009.

III. Adjustment for Excess Collections in Previous Years

Under the provisions of ADUFA I, if the agency collects more fees than were provided for in appropriations in any year, FDA is required to reduce its anticipated fee collections in a subsequent year by that amount (section 740(g)(4) of the act). Table 1 of this document shows the amount of collections realized and the amount provided in appropriations acts, and the amount to be offset in a subsequent year, as of the end of the latest complete fiscal year, 2007.

TABLE 1—FEES COLLECTED, FEES APPROPRIATED, AND OFFSET FOR FUTURE COLLECTIONS AS OF SEPTEMBER 30, 2007

Fiscal Year	Collections Realized	Fees Appropriated	Amount to Offset Future Collections
2004	$5,154,700	$5,000,000	$154,700
2005	$8,519,101	$8,354,000	$165,101
2006	$10,945,866	$11,318,000	$0
2007	$12,946,515	$11,604,000	$1,342,515
Total			$1,662,316
Amount offset when fees for FY 2008 were determined			$320,000
Remaining balance to be offset in FY 2009			$1,342,316

When ADUFA fees were established for FY 2008, the amount of fee revenues for FY 2008 was reduced by a total of $320,000 of excess collections. That leaves a total of $1,342,316 to be offset against FY 2009 revenue collections, lowering the net amount that would otherwise be collected. One-fourth of this amount, rounded to the nearest thousand, or $336,000, rounded to the nearest thousand dollars, will be subtracted from the statutory fee revenue amounts for each of the four fee categories in setting the FY 2009 adjusted revenue amount for each fee category. Thus, after adjustment for prior-year excess collections, the adjusted FY 2009 revenue target for each fee category is as follows:

Application Fee Revenue Amount: $3,479,000 ($3,815,000 minus $336,000)

Establishment Fee Revenue Amount: $3,479,000 ($3,815,000 minus $336,000)

Product Fee Revenue Amount: $3,479,000 ($3,815,000 minus $336,000)

Sponsor Fee Revenue Amount: $3,479,000 ($3,815,000 minus $336,000)

Thus, the adjusted revenue amount from all four categories after this adjustment totals $13,916,000.

IV. Application Fee Calculations for FY 2009

The terms ''animal drug applications'' and ''supplemental animal drug applications'' are defined in section 739(1) and (2) of the act (21 U.S.C. 379j–11(1) and (2)).

A. Application Fee Revenues and Numbers of Fee-Paying Applications

The application fee must be paid for any animal drug application or supplemental animal drug application that is subject to fees under ADUFA and that is submitted on or after September 1, 2003. The application fees are to be set so that they will generate $3,479,000 in fee revenue for FY 2009. This is the amount set out in the statute after it has been adjusted for excess collections in previous years as set out in section III of this document. The fee for a supplemental animal drug application for which safety or effectiveness data are required and for an animal drug application subject to criteria set forth in section 512(d)(4) of the act (21 U.S.C. 360b(d)(4)) is to be set at 50 percent of the animal drug application fee (see section 740(a)(1)(A)(ii) of the act, as amended by ADUFA II).

To set animal drug application fees and supplemental animal drug application fees to realize $3,479,000, FDA must first make some assumptions about the number of fee-paying applications and supplements it will receive in FY 2009.

The agency knows the number of applications that have been submitted in previous years. That number fluctuates significantly from year to year. In estimating the fee revenue to be generated by animal drug application fees in FY 2009, FDA is assuming that the number of applications that will pay fees in FY 2009 will equal the average number of submissions over the 4 most recent years (including an estimate for the current year). This may not fully account for possible year to year fluctuations in numbers of fee-paying applications, but FDA believes that this is a reasonable approach after 5 years of experience with this program.

Over the past 4 years, the average number of animal drug applications that have been subject to the full fee was 7.5, including the number for the most recent year, which is estimated at 4. Over this same period, the average number of supplemental applications and applications subject to the criteria set forth in section 512(d)(4) that would have been subject to half of the full fee was 13.25, including the number for the most recent year, which is estimated at 9.

Thus, for FY 2009, FDA estimates receipt of 7.5 fee paying original applications and 13.25 fee-paying supplemental animal drug applications and applications subject to the criteria set forth is section 512(d)(4), which pay half of the full fee.

B. Fee Rates for FY 2009

FDA must set the fee rates for FY 2009 so that the estimated 7.5 applications that pay the full fee and the estimated 13.25 supplements and applications subject to the criteria set forth in section 512(d)(4) that pay half of the full fee will generate a total of $3,479,000. To generate this amount, the fee for an animal drug application, rounded to the nearest hundred dollars, will have to be $246,300, and the fee for a supplemental animal drug application for which safety or effectiveness data are required and for applications subject to the criteria set forth in section 512(d)(4) will have to be $123,150.

V. Product Fee Calculations for FY 2009

A. Product Fee Revenues and Numbers of Fee-Paying Products

The animal drug product fee (also referred to as the product fee) must be paid annually by the person named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product submitted for listing under section 510 of the act (21 U.S.C. 360), and who had an animal drug application or supplemental animal drug application pending before FDA after September 1, 2003 (see section 740(a)(2) of the act). The term ''animal drug product'' is defined in section 739(3) of the act. The product fees are to be set so that they will generate $3,479,000 in fee revenue for FY 2009. This is the amount set out in the statute after it has been adjusted for excess collections in previous years as set out in section III of this document.

To set animal drug product fees to realize $3,479,000, FDA must make some assumptions about the number of products for which these fees will be paid in FY 2009. FDA developed data on all animal drug products that have been submitted for listing under section 510 of the act, and matched this to the list of all persons who had an animal drug application or supplement pending after September 1, 2003. As of August 2008, FDA estimates that there are a total of 785 products submitted for listing by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. Based on this, FDA estimates that a total of 785 products will be subject to this fee in FY 2009.

In estimating the fee revenue to be generated by animal drug product fees in FY 2009, FDA is assuming that 10 percent of the products invoiced, or about 78.5, will not pay fees in FY 2009 due to fee waivers and reductions. Based on experience with other user fee programs and the first 5 years of ADUFA, FDA believes that this is a reasonable basis for estimating the number of fee-paying products in FY 2009.

Accordingly, the agency estimates that fees for a total of 706.5 products (785 minus 78.5) will be paid in FY 2009.

B. Product Fee Rates for FY 2009

FDA must set the fee rates for FY 2009 so that the estimated 706.5 products for which fees will be paid will generate a total of $3,479,000. To generate this amount will require the fee for an animal drug product, rounded to the nearest 5 dollars, to be $4,925.

VI. Establishment Fee Calculations for FY 2009

A. Establishment Fee Revenues and Numbers of Fee-Paying Establishments

The animal drug establishment fee (also referred to as the establishment fee) must be paid annually by the person who: (1) Owns or operates, directly or through an affiliate, an animal drug establishment; (2) is named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product submitted for listing under section 510 of the act; (3) had an animal drug application or supplemental animal drug application pending before FDA after September 1, 2003; and (4) whose establishment engaged in the manufacture of the animal drug product during the FY (see section 740(a)(3) of the act). An establishment subject to animal drug establishment fees is assessed only one such fee per FY (see section 740(a)(3) of the act). The term ''animal drug establishment'' is defined in section 739(4) of the act. The establishment fees are to be set so that they will generate $3,479,000 in fee revenue for FY 2009. This is the amount set out in the statute after it has been adjusted for excess collections in previous years as set out in section III of this document.

To set animal drug establishment fees to realize $3,479,000, FDA must make some assumptions about the number of establishments for which these fees will

be paid in FY 2009. FDA developed data on all animal drug establishments and matched this to the list of all persons who had an animal drug application or supplement pending after September 1, 2003. As of August 2008, FDA estimates that there are a total of 65 establishments owned or operated by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. Based on this, FDA believes that 65 establishments will be subject to this fee in FY 2009.

In estimating the fee revenue to be generated by animal drug establishment fees in FY 2009, FDA is assuming that 10 percent of the establishments invoiced, or 6.5, will not pay fees in FY 2009 due to fee waivers and reductions. Based on experience with the first 5 years of ADUFA, FDA believes that this is a reasonable basis for estimating the number of fee-paying establishments in FY 2009.

Accordingly, the agency estimates that fees for a total of 58.5 establishments (65 minus 6.5) will be paid in FY 2009.

B. Establishment Fee Rates for FY 2009

FDA must set the fee rates for FY 2009 so that the estimated 58.5 establishments for which fees will be paid will generate a total of $3,479,000. To generate this amount will require the fee for an animal drug establishment, rounded to the nearest 50 dollars, to be $59,450.

VII. Sponsor Fee Calculations for FY 2009

A. Sponsor Fee Revenues and Numbers of Fee-Paying Sponsors

The animal drug sponsor fee (also referred to as the sponsor fee) must be paid annually by each person who: (1) Is named as the applicant in an animal drug application that has not been withdrawn or has submitted an investigational animal drug submission that has not been terminated or otherwise rendered inactive and (2) had an animal drug application, supplemental animal drug application, or investigational animal drug submission pending before FDA after September 1, 2003 (see sections 739(6) and 740(a)(4) of the act). An animal drug sponsor is subject to only one such fee each FY (see section 740(a)(4) of the act). The sponsor fees are to be set so that they will generate $3,479,000 in fee revenue for FY 2009. This is the amount set out in the statute after it has been adjusted for excess collections in previous years as set out in section III of this document.

To set animal drug sponsor fees to realize $3,479,000, FDA must make some assumptions about the number of sponsors who will pay these fees in FY 2009. Based on the number of firms that would have met this definition as of August 2008, FDA estimates that a total of 140 sponsors will meet this definition in FY 2009.

Careful review indicates that about one-third or 33 percent of all of these sponsors will qualify for a minor use/minor species waiver or reduction (section 740(d)(1)(C) of the act). Based on the agency's experience with sponsor fees, FDA's current best estimate is that an additional 20 percent will qualify for other waivers or reductions, for a total of 53 percent of the sponsors invoiced, or 74 sponsors, who will not pay fees in FY 2009 due to fee waivers and reductions. FDA believes that this is a reasonable basis for estimating the number of fee-paying sponsors in FY 2009.

Accordingly, the agency estimates that a total of 66 sponsors (140 minus 74) will pay sponsor fees in FY 2009.

B. Sponsor Fee Rates for FY 2009

FDA must set the fee rates for FY 2009 so that the estimated 66 sponsors that pay fees will generate a total of $3,479,000. To generate this amount will require the fee for an animal drug sponsor, rounded to the nearest 50 dollars, to be $52,700.

VIII. Fee Schedule for FY 2009

The fee rates for FY 2009 are summarized in table 2 of this document.

TABLE 2—FY 2009 FEE RATES

Animal Drug User Fee Category	Fee Rate for FY 2009
Animal Drug Application Fee	
Animal drug application	$246,300
Supplemental animal drug application for which safety or effectiveness data are required or animal drug application subject to the criteria set forth in section 512(d)(4) of the act	$123,150
Animal drug product fee	$4,925
Animal drug establishment fee[1]	$59,450
Animal drug sponsor fee[2]	$52,700

[1] An animal drug establishment is subject to only one such fee each FY.
[2] An animal drug sponsor is subject to only one such fee each FY.

IX. Procedures for Paying the FY 2009 Fees

A. Application Fees and Payment Instructions

The appropriate application fee established in the new fee schedule must be paid for an animal drug application or supplemental animal drug application subject to fees under ADUFA II that is submitted after September 30, 2008. Payment must be made in U.S. currency by check, bank draft, U.S. postal money order payable to the order of the Food and Drug Administration, by wire transfer, or electronically using Pay.gov (the ''Pay Now'' button on the cover sheet). On your check, bank draft, or U.S. postal money order, or wire transfer, please write your application's unique Payment Identification Number, beginning with the letters AD, from the upper right-hand corner of your completed Animal Drug User Fee Cover Sheet. Also write the FDA post office box number (P.O. Box 953877) on the enclosed check, bank draft, or money order. Your payment and a copy of the completed Animal Drug User Fee Cover Sheet can be mailed to: Food and Drug Administration, P.O. Box 953877, St. Louis, MO, 63195–3877. If payment is made via wire transfer, send payment to US Department of Treasury, TREAS, NYC, 33 Liberty St. New York, NY 10045, Account Name: Food and Drug Administration, Account Number: 75060099, Routing Number: 021030004, Swift Number: FRNYUS33. If payment is made via Pay.gov, you will first create and submit a cover sheet for your organization, then click on the ''Pay Now'' button. You will then be taken to the Pay.gov site to make your payment electronically.

If you prefer to send a check by a courier such as FEDEX or UPS, the courier may deliver the check and printed copy of the cover sheet to: US Bank, Attn: Government Lockbox

953877, 1005 Convention Plaza, St. Louis, Missouri 63101. (Note: This address is for courier delivery only. If you have any questions concerning courier delivery contact the US Bank at 314–418–4821. This phone number is only for questions about courier delivery.)

The tax identification number of the Food and Drug Administration is 530196965. (Note: In no case should the check for the fee be submitted to FDA with the application.)

It is helpful if the fee arrives at the bank at least a day or two before the application arrives at FDA's Center for Veterinary Medicine (CVM). FDA records the official application receipt date as the later of the following: the date the application was received by CVM, or the date US Bank notifies FDA that your check in the full amount of the payment due has been received, or when the United States Treasury notifies FDA of receipt of an electronic payment. US Bank and the United States Treasury are required to notify FDA within 1 working day, using the Payment Identification Number described previously.

B. Application Cover Sheet Procedures

Step One—Create a user account and password. Log onto the ADUFA Web site at *http://www.fda.gov/oc/adufa* and, under the ''Forms'' heading, click on the link ''User Fee Cover Sheet.'' For security reasons, each firm submitting an application will be assigned an organization identification number, and each user will also be required to set up a user account and password the first time they use this site. Online instructions will walk you through this process.

Step Two—Create an Animal Drug User Fee Cover Sheet, transmit it to FDA, and print a copy. After logging into your account with your user name and password, complete the steps required to create an Animal Drug User Fee Cover Sheet. One cover sheet is needed for each animal drug application or supplement. Once you are satisfied that the data on the cover sheet is accurate and you have finalized the Cover Sheet, you will be able to transmit it electronically to FDA and you will be able to print a copy of your cover sheet showing your unique Payment Identification Number.

Step Three—Send the payment for your application as described in section IX.A of this document.

Step Four—Please submit your application and a copy of the completed Animal Drug User Fee Cover Sheet to the following address: Food and Drug Administration, Center for Veterinary Medicine, Document Control Unit (HFV–199), 7500 Standish Pl., Rockville, MD 20855.

C. Product, Establishment and Sponsor Fees

By December 31, 2008, FDA will issue invoices and payment instructions for product, establishment, and sponsor fees for FY 2009 using this fee schedule. Payment will be due and payable on or before January 31, 2009. FDA will issue invoices in November 2009 for any products, establishments, and sponsors subject to fees for FY 2009 but that qualified for fees after the December 2008 billing.

Dated: September 8, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–21450 Filed 9–12–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0479]

Generic New Animal Drug User Fee Rates and Payment Procedures for Fiscal Year 2009

AGENCY: Food and Drug Administration

ACTION: Notice

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates and payment procedures for fiscal year (FY) 2009 generic new animal drug user fees. The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Animal Generic Drug User Fee Act of 2008 (AGDUFA), authorizes FDA to collect user fees for certain abbreviated applications for a generic new animal drug, on certain generic new animal drug products, and on certain sponsors of such abbreviated applications for generic new animal drugs and/or investigational submissions for generic new animal drugs. This notice establishes the fee rates for FY 2009.

For FY 2009, the generic new animal drug user fee rates are: $41,400 for each abbreviated application for a generic new animal drug; $3,005 for each generic new animal drug product; $56,350 for each generic new animal drug sponsor paying 100 percent of the sponsor fee; $42,265 for each generic new animal drug sponsor paying 75 percent of the sponsor fee; and $28,175 for a generic new animal drug sponsor paying 50 percent of the sponsor fee. FDA will issue invoices for FY 2009 product and sponsor fees by December 31, 2008, or within 30 days of enactment of an appropriation for these fees, whichever is later. These fees will be due and payable within 30 days of the issuance of the invoices.

The application fee rates are effective for all abbreviated applications for generic new animal drugs submitted on or after July 1, 2008, and will remain in effect through September 30, 2009. However, FDA may not collect application fees until enactment of an appropriation for these fees. Within 30 days of enactment of an appropriation for these fees, FDA will issue invoices for applications received on or after July 1, 2008, and will publish a **Federal Register** notice stating that for the remainder of fiscal year 2009 FDA will not accept any further abbreviated applications for generic new animal drugs for review until FDA has received full payment of application fees and any other generic new animal drug user fees owed. That **Federal Register** notice will also provide instructions for payment of abbreviated applications for generic new animal drug fees.

FOR FURTHER INFORMATION CONTACT: Visit the FDA Web site at *http://www.fda.gov/oc/agdufa* or contact Roxanne Schweitzer, Center for Veterinary Medicine (HFV–10), Food and Drug Administration, 7529 Standish Place, Rockville, MD 20855, 240–276–9705. For general questions, you may also e-mail the Center for Veterinary Medicine at: *cvmagdufa@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 741 of the act (21 U.S.C. 379j–21) establishes three different kinds of user fees: (1) Fees for certain types of abbreviated applications for generic new animal drugs, (2) annual fees for certain generic new animal drug products, and (3) annual fees for certain sponsors of abbreviated applications for generic new animal drugs and/or investigational submissions for generic new animal drugs (21 U.S.C. 379j–21(a)). When certain conditions are met, FDA will waive or reduce fees for generic new animal drugs intended solely to provide for a minor use or minor species indication (21 U.S.C. 379j–21(d)).

For FY 2009 through FY 2013, the act establishes aggregate yearly base revenue amounts for each of these fee categories. Base revenue amounts established for years after FY 2009 are subject to adjustment for workload. Fees for applications, products, and sponsors are to be established each year by FDA so that the revenue for each fee category will approximate the level established

in the statute, after the level has been adjusted for workload.

II. Revenue Amount for FY 2009

A. Statutory Fee Revenue Amounts

AGDUFA (Title II of Public Law 110–316 signed by the President on August 14, 2008) specifies that the aggregate revenue amount for FY 2009 for abbreviated application fees is $1,449,000, and the other two generic new animal drug user fee categories, annual product fees and annual sponsor fees, are $1,691,000 each, before any adjustment for workload is made (see 21 U.S.C. 379j–21(b)).

B. Inflation Adjustment to Fee Revenue Amount

The amounts established in AGDUFA for each year for FY 2009 through FY 2013 include an inflation adjustment, so no further inflation adjustment is required.

C. Workload Adjustment Fee Revenue Amount

For each FY beginning after FY 2009, AGDUFA provides that statutory fee revenue amounts shall be further adjusted to reflect changes in review workload (21 U.S.C. 379j–21(c)(1)). No workload adjustment is to be made in fee revenue amounts for FY 2009.

III. Abbreviated Application Fee Calculations for FY 2009

The term ''abbreviated application for a generic new animal drug'' is defined in 21 U.S.C. 379j–21(k)(1).

A. Application Fee Revenues and Numbers of Fee-Paying Applications

The application fee must be paid for abbreviated applications for generic new animal drugs that are subject to fees under AGDUFA and that are submitted on or after July 1, 2008. The application fees are to be set so that they will generate $1,449,000 in fee revenue for FY 2009. This is the amount set out in the statute and no adjustments to it are required for FY 2009.

To set fees for abbreviated applications for generic new animal drugs to realize $1,449,000, FDA must first make some assumptions about the number of fee-paying abbreviated applications it will receive over the 15 months from July 1, 2008 through September 30, 2009.

The agency knows the number of such applications that have been submitted in previous years. That number fluctuates significantly from year to year. FDA is assuming that the number of abbreviated applications that will pay fees in FY 2009 will equal the average number of submissions over the 4 most recent years. This may not fully account for possible year to year fluctuations in numbers of fee-paying applications, but FDA believes that this is a reasonable approach after about 5 years of experience with other user fee programs. Further, because the imposition of a fee may reduce somewhat the number of abbreviated applications submitted, FDA will use a 12-month average estimate in estimating the number of abbreviated applications that will be subject to and pay fees in the 15-month period from July 1, 2008 through September 30, 2009.

Over the past 4 years, the average number of abbreviated applications for generic new animal drugs that would have been subject to the fee was 38.75, including the number for the most recent year, which is estimated at 40. FDA will also assume that 10 percent of these applications, or 3.875, may be subject to fee waivers or reduction based on indications solely for minor use or minor species.

Thus, for FY 2009, FDA estimates receipt of 34.55 (38.75 minus 3.875) fee-paying abbreviated applications.

B. Fee Rates for FY 2009

FDA must set the fee rates for FY 2009 so that the estimated 35 abbreviated applications that pay the fee will generate a total of $1,449,000. To generate this amount, the fee for an animal drug application, rounded to the nearest hundred dollars, will have to be $41,400.

IV. Generic Product Fee Calculations for FY 2009

A. Product Fee Revenues and Numbers of Fee-Paying Products

The generic new animal drug product fee (also referred to as the product fee) must be paid annually by the person named as the applicant in an abbreviated application for a generic new animal drug or a supplemental abbreviated application for a generic new animal drug product submitted for listing under section 510 of the act (21 U.S.C. 360), and who had an abbreviated application or a supplemental abbreviated application for a generic new animal drug product pending at FDA after September 1, 2008 (see 21 U.S.C. 379j–21(a)(2)). The term ''generic new animal drug product'' means each specific strength or potency of a particular active ingredient or ingredients in final dosage form marketed by a particular manufacturer or distributor, which is uniquely identified by the labeler code and product code portions of the national drug code, and for which an abbreviated application for a generic new animal drug or supplemental abbreviated application for a generic new animal drug has been approved (21 U.S.C. 379j–21(k)(6)). The product fees are to be set so that they will generate $1,691,000 in fee revenue for FY 2009. This is the amount set out in the statute and no further adjustments are required for FY 2009.

To set generic new animal drug product fees to realize $1,691,000, FDA must make some assumptions about the number of products for which these fees will be paid in FY 2009. FDA developed data on all generic new animal drug products that have been submitted for listing under section 510 of the act, and matched this to the list of all persons who FDA estimated would have an abbreviated application for a generic new animal drug or supplemental abbreviated application pending after September 1, 2008. FDA estimates there is a total of 626 products submitted for listing by persons who had an abbreviated application for a generic new animal drug or supplemental abbreviated application for a generic new animal drug pending after September 1, 2008. Based on this, FDA believes that a total of 626 products will be subject to this fee in FY 2009.

In estimating the fee revenue to be generated by generic new animal drug product fees in FY 2009, FDA is assuming that 10 percent of the products invoiced, or 63, will not pay fees in FY 2009 due to fee waivers and reductions. Based on experience with other user fee programs and the first 5 years of the Animal Drug User Fee Act program (ADUFA), FDA believes that this is a reasonable basis for estimating the number of fee-paying products in FY 2009.

Accordingly, the agency estimates that a total of 563 (626 minus 63) products will be subject to product fees in FY 2009.

B. Product Fee Rates for FY 2009

FDA must set the fee rates for FY 2009 so that the estimated 563 products that pay fees will generate a total of $1,691,000. To generate this amount will require the fee for a generic new animal drug product, rounded to the nearest five dollars, to be $3,005.

V. Generic New Animal Drug Sponsor Fee Calculations for FY 2009

A. Sponsor Fee Revenues and Numbers of Fee-Paying Sponsors

The generic new animal drug sponsor fee (also referred to as the sponsor fee) must be paid annually by each person who: (1) Is named as the applicant in an

abbreviated application for a generic new animal drug, that has not been withdrawn by the applicant and for which approval has not been withdrawn by the Secretary of Health and Human Services, or has submitted an investigational submission for a generic new animal drug that has not been terminated or otherwise rendered inactive; and (2) had an abbreviated application for a generic new animal drug, supplemental abbreviated application for a generic new animal drug, or investigational submission for a generic new animal drug pending at FDA after September 1, 2008 (see 21 U.S.C. 379j–21(k)(7) and 379j–21(a)(3)). A generic new animal drug sponsor is subject to only one such fee each fiscal year (see 21 U.S.C. 379j–21(a)(3)(B)). Applicants with more than six approved abbreviated applications will pay 100 percent of the sponsor fee, applicants with two to six approved abbreviated applications will pay 75 percent of the sponsor fee, and applicants with one or fewer approved abbreviated applications will pay 50 percent of the sponsor fee (see 21 U.S.C. 379j–21(a)(3)(B)). The sponsor fees are to be set so that they will generate $1,691,000 in fee revenue for FY 2009. This is the amount set out in the statute and no adjustments are required for FY 2009.

To set generic new animal drug sponsor fees to realize $1,691,000, FDA must make some assumptions about the number of sponsors who will pay these fees in FY 2009. Based on the number of firms that would have met this definition in each of the past 5 years, FDA estimates that in FY 2009 11 sponsors will pay 100 percent (full) fees, 11 sponsors will pay 75 percent fees, and 28 sponsors will pay 50 percent fees. That totals the equivalent of 33.25 full sponsor fees (11 times 100 percent or 11, plus 11 times 75 percent or 8.25, plus 28 times 50 percent or 14).

FDA estimates that about 10 percent of all of these sponsors, or 3.25, may qualify for a minor use/minor species waiver or reduction.

Accordingly, the agency estimates that the equivalent of 30 full sponsor fees (33.25 minus 3.25) are likely to be paid in FY 2009.

B. Sponsor Fee Rates for FY 2009

FDA must set the fee rates for FY 2009 so that the estimated equivalent of 30 full sponsor fees will generate a total of $1,691,000. To generate this amount will require the 100-percent fee for a generic new animal drug sponsor, rounded to the nearest fifty dollars, to be $56,350. Accordingly, the fee for those paying 75 percent of the full sponsor fee, rounded to the nearest five dollars, will be $42,265, and the fee for those paying 50 percent of the full sponsor fee will be $28,175.

VI. Fee Schedule for FY 2009

The fee rates for FY 2009 are summarized in table 1 of this document.

TABLE 1—FY 2009 FEE RATES

Generic New Animal Drug User Fee Category	Fee Rate for FY 2009
Abbreviated Application for Generic New Animal Drug Fee	$41,400
Generic New Animal Drug Product Fee	$3,005
100 Percent Generic New Animal Drug Sponsor Fee*	$56,350
75 Percent Generic New Animal Drug Sponsor Fee*	$42,265
50 Percent Generic New Animal Drug Sponsor Fee*	$28,175

* An animal drug sponsor is subject to only one such fee each fiscal year

VII. Procedures for Paying FY 2009 Generic New Animal Drug User Fees

FDA may not collect user fees for abbreviated applications, for generic new animal drug products, and for generic new animal drug sponsors until an appropriation of fees is provided by Congress (see 21 U.S.C. 379j–21(g)(1)). For this reason FDA may not begin to collect these fees at this time.

Fees for generic new animal drug products and sponsors will be invoiced at the rates published in this notice on the later of December 31, 2008, or 30 days after appropriation of generic new animal drug user fees by Congress.

Invoices for fees for abbreviated applications for generic new animal drugs submitted on or after July 1, 2008, will be issued 30 days after appropriation of generic new animal drug user fees by Congress. After that time, FDA will not consider an abbreviated application for a generic abbreviated new animal drug complete unless the application fee for that application has been paid in advance. Within 30 days after appropriation of generic new animal drug user fees by Congress, FDA will publish another notice in the **Federal Register** providing payment instructions so that these fees may be paid in advance of the submission of such abbreviated applications from that time forward.

Dated: September 3, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–21453 Filed 9–12–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel; Application of Platform Technologies for the Development of Therapeutics for Biodefense-A.

Date: October 16–17, 2008.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Alec Ritchie, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID/DHHS, 6700 B Rockledge Drive, MSC 7616,

Bethesda, MD 20892–7616, 301–435–1614, *aritchie@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases, Special Emphasis Panel, Application of Platform Technologies for the Development of Therapeutics for Biodefense-B.

Date: October 20–21, 2008.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Washingtonian Center Courtyard, 204 Boardwalk Place, Gaithersburg, MD 20878.

Contact Person: Alec Ritchie, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID/DHHS, 6700 B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–435–1614, *aritchie@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases, Special Emphasis Panel, Application of Platform Technologies for the Development of Therapeutics for Biodefense-C.

Date: October 23–24, 2008.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Alec Ritchie, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID/DHHS, 6700 B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–435–1614, *aritchie@niaid.nih.gov.*

Name of Committee: Allergy, Immunology, and Transplantation Research Committee.

Date: October 29, 2008.

Time: 11 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge Drive, 3128, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Katrin Eichelberg, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 496–0818, *keichelberg@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 5, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–21169 Filed 9–12–08; 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 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 Allergy and Infectious Diseases Special Emphasis Panel; Cooperative Research Partnerships for Biodefense and Emerging Infectious Diseases SEP 6.

Date: October 3, 2008.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, 3257, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Michelle M Timmerman, PhD, Scientific Review Officer, Scientific Review Program NIH/NIAID/DHHS, Room 3147, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–451–4573, *timmermanm@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HIV Vaccines Research and Development (HIVRAD).

Date: October 6–8, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington DC/Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Eleazar Cohen, PhD, Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, Room 3129, Bethesda, MD 20892, 301–435–3564, *ec17w@nih.gov.*

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases Research Committee; Microbiology and Infectious Diseases Research Committee.

Date: October 9, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Crowne Plaza—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Annie Walker-Abbey, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIH/NIAID/DHHS, 6700B Rockledge Drive, RM. 3126, Bethesda, MD 20892–7616, 301–451–2671, *aabbey@niaidnih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Hematopoietic Cell Transplantation.

Date: October 16, 2008.

Time: 11 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Sujata Vijh, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–594–0985, *vijhs@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 5, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–21170 Filed 9–12–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Services Subcommittee of the Interagency Autism Coordinating Committee (IACC).

The purpose of the Services Subcommittee is to review the current state of services and supports for individuals with Autism Spectrum Disorder (ASD) and their families in order to improve these services. The Subcommittee meeting will be conducted as a telephone conference call with presentations on the web. This meeting is open for the public to call in to listen and to access the web presentations. The Subcommittee will report on its meeting at the next meeting of the IACC on November 21, 2008.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of Meeting: Services Subcommittee Conference Call and Webinar.

Date: October 10, 2008.

Time: 9:30 a.m. to 11:30 a.m. Eastern Time.

Agenda: To review public comments received in response to a completed Request for Information, and to finalize preparations for presentations on ASD services for the IACC meeting on November 21, 2008.

Place: Conference Call and Webinar. To Access the Web, *https://www1.gotomeeting.com/register/835905443.* To Access the Conference Call: *Dial:* 888–455–2920, *Access code:* 3857872.

Contact Person: Azik Schwechter, Ph.D., Office of Autism Research Coordination, Office of the Director, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 8203a, Bethesda, MD 20892–9669, 301–443–7163, *IACCPublicInquiries@mail.nih.gov.*

Please Note: The workgroup meeting will be open to the public through a conference call phone number and a web presentation tool on the Internet. Individuals who participate using these electronic services and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request at least 2 weeks prior to the meeting.

Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. There may be an opportunity for members of the public to submit written comments during the workgroup meeting through the web presentation tool. Submitted comments will be reviewed after the meeting. If you experience any technical problems with the web presentation tool, please contact GoToWebinar at (800) 263–6317.

To access the web presentation tool on the Internet the following computer capabilities are required:

(A) Internet Explorer 5.0 or later, Netscape Navigator 6.0 or later or Mozilla Firefox 1.0 or later;

(B) Windows® 2000, XP Home, XP Pro, 2003 Server or Vista;

(C) Stable 56k, cable modem, ISDN, DSL or better Internet connection;

(D) Minimum of Pentium 400 with 256 MB of RAM (Recommended);

(E) Java Virtual Machine enabled (Recommended).

Information about the IACC is available on the Web site: *http://www.nimh.nih.gov/research-funding/scientific-meetings/recurring-meetings/iacc/index.shtml.*

Dated: September 8, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–21364 Filed 9–12–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Drug Testing Advisory Board (DTAB) will meet on September 29, 2008 from 10 a.m. to 5 p.m. via video teleconference.

The DTAB will meet to provide an initial briefing to members regarding the proposed Final Notice for Revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs. This meeting will be conducted in closed session since the public comment period has ended and it is not appropriate to receive further public comments in an open session. An open session will significantly frustrate the Department's ability to prepare for and participate in the internal review of the proposed Revisions. The meeting will be closed to the public as determined by the SAMHSA Administrator in accordance with Title 5 U.S.C. Section 552b(c)(6), 552b(c)(9)(B), and 5 U.S.C. App. 2 § 10(d).

Substantive program information and a roster of Board members may be obtained as soon as available after the meeting, either by accessing the SAMHSA Committee Web site at *https://www.nac.samhsa.gov/DTAB/index.aspx* or by contacting DTAB's Program Assistant, Ms. Giselle Hersh (see contact information below)

Committee Name: Substance Abuse and Mental Health Services Administration, Drug Testing Advisory Board.

Date/Time/Type: September 29, 2008, from 10 a.m. to 5 p.m.: Closed.

Place: 1 Choke Cherry Road, VTC Conference Room, L–1057, Rockville, Maryland 20857.

Contact: Ms. Giselle Hersh, Program Assistant, SAMHSA Drug Testing Advisory Board, 1 Choke Cherry Road, Room 2–1042, Rockville, Maryland 20857, Telephone: 240–276–2600, Fax: 240–276–2610, E-mail: *Giselle.Hersh@samhsa.hhs.gov.*

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. E8–21236 Filed 9–12–08; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5191–N–24]

Notice of Proposed Information Collection: Comment Request; FHA-Insured Mortgage Loan Servicing Involving the Claims and Conveyance Process, Property Inspection/Preservation

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 14, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Mortgagee's Request for Extension of Time.

OMB Control Number, if applicable: 2502–0436.

Description of the need for the information and proposed use: This information collection is used as a

''turnaround'' document by mortgage lenders to request extension of time and for HUD to provide a response. For audit purposes, regulations require mortgagees to maintain claim files for three years after a claim is paid (OMB control numbers 2502–0429 and 2502–0523). Information in the claim file includes copies of the HUD approval with related claim documents to verify that HUD has authorized extensions of time on specific cases.

Agency form numbers, if applicable: HUD–50012.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 8,316. The number of respondents is 146, the number of responses is 51,976, the frequency of response is on occasion, and the burden hour per response is .16.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 4, 2008.

George Tomchick,

Director of Budget and Field Resource.

[FR Doc. E8–21371 Filed 9–12–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5220–N–03]

Notice of Funding Availability (NOFA) for the Continuum of Care Homeless Assistance Program: Technical Corrections

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: On July 10, 2008, HUD published the NOFA for the Continuum of Care (CoC) Homeless Assistance Program. Through this NOFA, HUD is making available approximately $1.42 billion in Fiscal Year (FY) 2008 for the CoC program. The purpose of the CoC program is to reduce the incidence of homelessness in communities by assisting homeless individuals and families to move to self sufficiency and permanent housing. On August 13, 2008, HUD published a notice that established the deadline date for the submission of applications and corrected or clarified portions of the CoC NOFA. Today's publication clarifies the CoC NOFA regarding the projects subject to the calculation for housing emphasis points. Today's publication also moves the deadline date for the submission of applications.

FOR FURTHER INFORMATION CONTACT: Individuals may direct questions regarding the CoC NOFA to the HUD Field Office serving their area, at the telephone numbers shown in HUD's FY2008 Notice of Funding Availability (NOFA); Policy Requirements and General Section to HUD's FY2008 NOFAs for Discretionary Programs (General Section) published on March 19, 2008 (73 FR 14883), or may contact the *e-snaps* Help Desk at 1–877–6esnaps (1–877–637–6277). Individuals who are hearing- or speech-impaired should use the Information Relay Service at 1–800–877–8339. These are toll-free numbers.

SUPPLEMENTARY INFORMATION: On April 30, 2008 (73 FR 23483), HUD published its Notice of FY2008 Opportunity to Register and Other Important Information for Electronic Application Submission for Continuum of Care Homeless Assistance Programs (CoC Early Registration Notice). The CoC Early Registration Notice alerted the public that HUD would require Continuums of Care to submit applications electronically, using *e-snaps*, an electronic system separate from *Grants.gov*. On July 10, 2008 (73 FR 39840), HUD published its CoC NOFA, making available approximately $1.42 billion in FY 2008 for the CoC program. The purpose of the CoC program is to reduce the incidence of homelessness in communities by assisting homeless individuals and families to move to self sufficiency and permanent housing. In the July 10, 2008, CoC NOFA, HUD stated that the application portion of the *e-snaps* system had not yet been launched and that HUD, as a result, was unable to establish a due date for the FY2008 CoC competition. HUD stated, however, that it would announce the application due date for the program through a separate **Federal Register** notice. On August 13, 2008 (73 FR 47205), HUD published a notice establishing the deadline date for the submission of applications and correcting or clarifying portions of the CoC NOFA published on July 10, 2008.

Today's publication clarifies the CoC NOFA regarding the projects subject to the calculation for housing emphasis points. Today's publication also moves the deadline date for applications to Thursday, October 16, 2008.

Clarifications to Application Instructions and/or Minor Technical Changes

Because *e-snaps* is a new application system, it may be necessary to make clarification to instructions and/or minor technical changes to the system based on feedback from users. Any changes of this type will be communicated to Continuum of Care users and stakeholders via the Homeless Assistance Listserv and will be posted on the Homelessness Resource Exchange *e-snaps* training page and/or Frequently Asked Questions page. To join the listserv go to the HUD Web site at: *http://www.hud.gov/subscribe/signup.cfm?listname=Homeless%20Assistance%20Program&list*. The *e-snaps* training page on the Homelessness Resource Exchange can be accessed at: *http://www.hudhre.info/esnaps/*.

Deadline for Applications

The application deadline date for the CoC NOFA is extended to Thursday, October 16, 2008. Electronic applications must be received by *e-snaps* by 4 p.m. eastern time on the deadline date. HUD will close *e-snaps* at 4:01 p.m. eastern time. Similarly, paper applications from applicants granted a waiver from the electronic application submission requirement must be received by HUD by 4 p.m. eastern time on the deadline date.

Summary of Technical Corrections

On July 10, 2008 (73 FR 39839) HUD published its NOFA for the CoC Program. As discussed in this technical correction notice, HUD is moving the deadline date for applications to provide applicants additional time to submit their applications. HUD is also, by this notice, clarifying the CoC NOFA regarding the projects subject to the calculation for housing emphasis points.

Accordingly, on page 39840, Overview Information, Section F., first column, entitled ''Dates,'' HUD is revising this section to read as follows:

F. Dates: The application deadline date for the CoC NOFA is Thursday, October 16, 2008. Electronic applications must be received by *e-snaps* by 4 p.m. eastern time on the deadline date. HUD will close *e-snaps* at 4:01 p.m. eastern time. Similarly, paper applications from applicants granted a waiver from the electronic application submission requirement must be received by HUD by 4 p.m. eastern time on the deadline date.

At page 39851, revise section V.1.e., third column, to read as follows:

e. *Emphasis on Housing Activities:* HUD will award 18 points based on the

relationship between funds requested for housing activities (*i.e.*, transitional and permanent) and funds requested for supportive service activities. Housing emphasis will be calculated on eligible new and renewal projects within FPRN, eligible Samaritan Housing Initiative projects, eligible Rapid Re-Housing for Families Demonstration Program projects, and eligible S+C renewal projects. HUD will count as a housing activity all approvable requests for funds for rental assistance and approvable requests for acquisition, rehabilitation, construction, leasing and operations when used in connection with housing. HMIS costs and administrative costs will be excluded from this calculation. CoCs are not required to have 100 percent housing activities to receive the full 18 points for these scoring criteria.

Dated: September 9, 2008.

Susan D. Peppler,

Assistant Secretary for Community Planning and Development.

[FR Doc. E8–21493 Filed 9–12–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5240–N–01]

Notice of FHA Debenture Call

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice announces a debenture recall of certain Federal Housing Administration (FHA) debentures, in accordance with authority provided in the National Housing Act.

FOR FURTHER INFORMATION CONTACT: Yong Sun, FHA Financial Reporting Division, Department of Housing and Urban Development, 451 7th Street, SW., Room 5148, Washington, DC 20410, telephone 202–402–4778. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Pursuant to section 207(j) of the National Housing Act, 12 U.S.C. 1713(j), and in accordance with HUD's regulation at 24 CFR 207.259(e)(3), the Assistant Secretary for Housing-Federal Housing Commissioner, with the approval of the Secretary of the Treasury, announces the call of all FHA debentures, with a coupon rate of 5.50 percent or above, except for those debentures subject to ''debenture lock agreements,'' that have been registered on the books of the Bureau of the Public Debt, Department of the Treasury, and are, therefore, ''outstanding'' as of September 30, 2008. The date of the call is January 1, 2009.

The debentures will be redeemed at par plus accrued interest. Interest will cease to accrue on the debentures as of the call date. At redemption, final interest on any called debentures will be paid along with the principal. Payment of final principal and interest due on January 1, 2009 will be made automatically to the registered holder.

During the period from the date of this notice to the call date, debentures that are subject to the call may not be used by the mortgagee for a special redemption purchase in payment of a mortgage insurance premium.

No transfer of debentures covered by the foregoing call will be made on the books maintained by the Treasury Department on or after December 15, 2008. This debenture call does not affect the right of the holder of a debenture to sell or assign the debenture on or after this date.

Dated: August 4, 2008.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E8–21394 Filed 9–12–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2008–N0237; 80221–1113–0000–F5]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We invite the public to comment on the following applications to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before October 15, 2008.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Endangered Species Program Manager, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (*telephone:* 916–414–6464; *fax:* 916–414–6486). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist, see **ADDRESSES**, (*telephone:* 760–431–9440; *fax:* 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (''we'') solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit No. TE–190302

Applicant: Mitch C. Siemens, Santa Maria, California

The applicant requests a permit to take (survey, capture, handle, and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys within Santa Barbara County, California for the purpose of enhancing its survival.

Permit No. TE–814222

Applicant: California Department of Parks and Recreation, San Diego, California

The applicant requests an amendment to take (harass by survey, locate/monitor nests, and band chicks and fledglings) the California least tern (*Sterna Antillarum browni*) in conjunction with surveys and population monitoring studies within California State Park lands in San Diego, Imperial, Orange, Riverside, southwestern San Bernardino Counties, and in areas in Los Angeles County south of the Angeles National Forest, California, for the purpose of enhancing its survival.

Permit No. TE–190300

Applicant: Debra G. De La Torre, Lytle Creek, California

The permittee requests a permit to take (survey, trap, handle, and release) the Stephen's kangaroo rat (*Dipodomys stephensi*) in conjunction with surveys and population monitoring activities throughout the range of the species in

California for the purpose of enhancing their survival.

Permit No. TE–190303

Applicant: Daniel Shaw, Sacramento, California

The applicant requests a permit to take (survey, capture, handle, and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys within California State Park lands in Santa Barbara and Sonoma Counties, California for the purpose of enhancing its survival.

Permit No. TE–095858

Applicant: Arianne B. Preite, Anaheim, California

The applicant requests an amendment to take (harass by survey, and locate/monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys and monitoring activities in Orange, Los Angeles, San Diego, Riverside, and San Bernardino Counties in California for the purpose of enhancing its survival.

Permit No. TE–191704

Applicant: Dana E. Terry, Walnut Creek, California

The applicant requests a permit to take (survey, capture, handle, and release) the California tiger salamander (*Ambystoma californiense*), and take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–170389

Applicant: Travis B. Cooper, San Juan Capistrano, California

The applicant requests an amendment to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–192714

Applicant: Southern California Coastal Water Research Group, Costa Mesa, California

The applicant requests a permit to take (capture and release) the tidewater goby (*Eucyclogobius newberryi*) and take (harass) the light-footed clapper rail (*Rallus longirostris levipes*), and California least tern (*Sterna antillarum browni*) in conjunction with coastal wetland research in Santa Barbara, Ventura, Los Angeles, Orange, and San Diego Counties, California for the purpose of enhancing their survival.

Permit No. TE–192708

Applicant: Sarah M. Farmer, San Diego, California

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–192702

Applicant: Jamie M. Kneitel, Sacramento, California

The applicant requests a permit to take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

We solicit public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Dated: September 9, 2008.

Mary Grim,

Acting Regional Director, Region 8, Sacramento, California.

[FR Doc. E8–21411 Filed 9–12–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–FHC–2008–N0234; 53330–1335–0000–J3]

Lake Champlain Sea Lamprey Control Alternatives Workgroup

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a meeting of the Lake Champlain Sea Lamprey Control Alternatives Workgroup (Workgroup). The Workgroup's purpose is to provide, in an advisory capacity, recommendations and advice on research and implementation of sea lamprey control techniques alternative to lampricide that are technically feasible, cost effective, and environmentally safe. The primary objective of the meeting will be to discuss potential research initiatives that may enhance alternative sea lamprey control techniques. The meeting is open to the public.

DATES: The Workgroup will meet on Friday, October 10, 2008, from 1 to 4 p.m.

ADDRESSES: The meeting will be held at the City of Burlington Main Wastewater Plant, Large Conference Room, 53 Lavalley Lane, Burlington, VT 05401; telephone 802–863–4501.

FOR FURTHER INFORMATION CONTACT: Dave Tilton, Designated Federal Officer, Lake Champlain Sea Lamprey Control Alternatives Workgroup, Lake Champlain Fish and Wildlife Resources Office, U.S. Fish and Wildlife Service, 11 Lincoln Street, Essex Junction, VT 05452 (U.S. mail); 802–872–0629 (telephone); or *Dave_Tilton@fws.gov* (electronic mail).

SUPPLEMENTARY INFORMATION: We publish this notice under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.). The Workgroup's specific responsibilities are to provide advice regarding the implementation of sea lamprey control methods alternative to lampricides, to recommend priorities for research to be conducted by cooperating organizations and demonstration projects to be developed and funded by State and Federal agencies, and to assist Federal and State agencies with the coordination of alternative sea lamprey control research to advance the state of the science in Lake Champlain and the Great Lakes.

Dated: August 26, 2008.

Wendi Weber,

Acting Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts 01305.

[FR Doc. E8–21440 Filed 9–12–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Agency Information Collection Activities: Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of new information collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that

we will submit to OMB a new information collection request (ICR) for review and approval. This notice provides the public an opportunity to comment on the paperwork requirements for the National Geological and Geophysical Data Preservation Program (NGGDPP) under Section 351 of the Energy Policy Act of 2005. To submit a proposal to the NGGDPP, a project narrative must be completed and submitted via Grants.gov. Furthermore, a final technical report for all projects is required at the end of the project period. Narrative and report guidance is available through *http://datapreservation.usgs.gov/* and at *http://www.Grants.gov*.

DATES: Submit written comments by November 14, 2008.

ADDRESSES: Please submit comments on this information collection directly to the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of Interior via e-mail [*OIRA_DOCKET@omb.eop.gov*]; or fax (202) 395–6566; and identify your submission as 1028–NEW. Please also submit a copy of your comments to Phadrea Ponds, U.S.G.S. Information Collections Clearance Officer, 2150–C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226–9230 (fax); or *pponds@usgs.gov* (e-mail). Please reference ''Information Collection 1028–NEW, NGGDPP'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Tamara L. Dickinson at (703) 648–6603 or Frances W. Pierce at (703) 648–6636.

SUPPLEMENTARY INFORMATION:

Title: National Geological and Geophysical Data Preservation Program (NGGDPP).

OMB Control Number: 1028–NEW.

Abstract: Section 351 of the Energy Policy Act of 2005 directs the Secretary of the Interior, through the Director of the U.S. Geological Survey, as follows, ''The Secretary shall carry out a National Geological and Geophysical Data Preservation Program in accordance with this section—

(1) To archive geologic, geophysical, and engineering data, maps, well logs, and samples;

(2) To provide a national catalog of such archival material; and

(3) To provide technical and financial assistance related to the archival material.''

The Plan outlines program goals and recommends implementation strategies. An action item in the plan is to ''begin interactions with State geological surveys and other DOI agencies that maintain geological and geophysical data and samples to address their preservation and data rescue needs.'' In response, the USGS is requesting each state that elects to participate in the program to:

(1) Inventory their current collections and data preservation needs to provide a snapshot of the diversity of scientific collections held, supported, or used by state geological surveys. This inventory of current collections will form the foundation of the National Catalog;

(2) Build the National Catalog by providing site-specific metadata for items in inventoried collections. Focus on site-specific sample data allows broad national coverage with content useful to a wide variety of users. The types of sites cataloged will be determined by the holdings of participating States; and

(3) In FY 2010 and beyond, depending on appropriations, states would be invited to propose projects that address other priorities identified in the Implementation Plan for the National Geological and Geophysical Data Preservation Program, including: (a) Digital infrastructure; (b) Outreach; and (c) Special data rescue needs.

Furthermore, annual data preservation priorities are provided in the Program Announcement as guidance for applicants to consider when submitting proposals. Annual priorities are determined by the USGS NGGDPP Catalog and Financial and Technical Assistance Committees comprising representatives from state geological surveys, industry, academia, and DOI. Since its inception in 2007, NGGDPP has awarded, and 35 states have matched, over $610,000 in grant funds. This notice concerns the collection of information that is sufficient and relevant to evaluate and select proposals for funding. We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and implementing regulations (43 CFR Part 2), and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' Responses are voluntary. No questions of a ''sensitive'' nature are asked. We intend to release the project abstracts and primary investigators for awarded/funded projects only.

Frequency: Annually.

Estimated Annual Number and Description of Respondents: Approximately 49 State Geological Surveys will have the opportunity to apply for matching Federal funds.

Respondent Obligation: Voluntary (necessary to receive benefits).

Estimated Total Number of Annual Responses: 34.

Estimated Annual Burden Hours: 1,224 hours.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: We estimate the public reporting burden averages 36 hours per response. This includes time (1) to write and review the proposal and submit it through Grants.gov, and (2) prepare and submit the final technical report.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'': We have not identified any ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) (44 U.S.C. 3501, *et seq.*) requires each agency '' * * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * * '' Agencies must specifically solicit comments. We invite comments concerning this information collection on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

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

(4) Ways to minimize the burden of the collection of information on respondents.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

USGS Information Collection Clearance Officer: Phadrea D. Ponds, 970–226–9445.

Dated: September 8, 2008.

Victor Labson,

Acting Associate Director for Geology.

[FR Doc. E8–21427 Filed 9–12–08; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Agency Information Collection Activities: Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of an information collection (1028–0048).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we will submit to OMB an information collection request (ICR) to renew approval of the paperwork requirements for ''USGS Earthquake Report, (1 USGS form).'' This notice provides the public an opportunity to comment on the paperwork burden of this form.

DATES: You must submit comments on or before November 14, 2008.

ADDRESSES: Send your comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via OMB e-mail: (*OIRA_DOCKET@omb.eop.gov*); or by fax (202) 395–6566; and identify your submission with #1028–0048.

Please submit a copy of your comments to Phadrea Ponds, Information Collections, U.S. Geological Survey, 2150-C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226–9230 (fax); or *pponds@usgs.gov* (e-mail). Use Information Collection Number 1028–0062 in the subject line.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact John Dewey at (303) 274–8419.

SUPPLEMENTARY INFORMATION:

Title: USGS Earthquake Report.

OMB Control Number: 1028–0048.

Type of Request: Revision of a currently approved collection.

Abstract: The U.S. Geological Survey is required to collect, evaluate, publish and distribute published information concerning earthquakes. Respondents will have an opportunity to voluntarily supply information concerning the effects of shaking from an earthquake—on themselves, buildings, other man-made structures, and ground effects such as faulting or landslides.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and implementing regulations (43 CFR part 2), and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' Responses are voluntary. No questions of a ''sensitive'' nature are asked. We will release data collected on these forms only in formats that do not include proprietary information volunteered by respondents.

Affected Public: General Public.

Respondent Obligation: Voluntary.

Frequency of Collection: On occasion, after each earthquake.

Estimated Number and Description of Respondents: Approximately 100,000 individuals affected by an earthquake.

Estimated Number of Responses: 80,000.

Annual Burden Hours: 10,000 hours.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: The currently approved ''hour'' burden for this collection is 10,000 hours. We estimate the public reporting burden will average 6 minutes per response. This includes the time for reviewing instructions, and answering a Web-based questionnaire.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) (44 U.S.C. 3501, *et seq.*) requires each agency '' * * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * * '' Agencies must specifically solicit comments. We invite comments concerning this information collection on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

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

(4) Ways to minimize the burden of the collection of information on respondents.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done. To comply with the public process, we publish this **Federal Register** notice announcing that we will submit this ICR to OMB for approval. The notice provided the required 60-day public comment period.

USGS Information Collection Clearance Officer: Phadrea Ponds, 970–226–9445.

Dated: September 9, 2008.

Vic Labson,

Acting Associate Director for Geology.

[FR Doc. E8–21428 Filed 9–12–08; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14930–B, F–14930–C, F–14930–D, F–14930–E, F–14930–M; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to NANA Regional Corporation, Inc., Successor in Interest to Akuliuk Corporation. The lands are in the vicinity of Selawik, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 13 N., R. 4 W.,
Secs. 1 to 36, inclusive.
Containing approximately 18,501 acres.

T. 14 N., R. 4 W.,
Secs. 21 to 36, inclusive.
Containing approximately 8,452 acres.

T. 12 N., R. 5 W.,
Sec. 33.
Containing approximately 60 acres.

T. 14 N., R. 5 W.,
Secs. 1 to 4, inclusive;

Sec. 6;
Sec. 9 to 16, inclusive;
Secs. 21 to 24, inclusive;
Sec. 31.

Containing approximately 8,952 acres.

T. 16 N., R. 5 W.,
Secs. 2 and 15.

Containing approximately 1,280 acres.

T. 16 N., R. 8 W.,
Secs. 14, 22, and 23.

Containing approximately 1,840 acres.
Aggregating approximately 39,085 acres.

The subsurface estate in these lands will be conveyed to NANA Regional Corporation, Inc. when the surface estate is conveyed to NANA Regional Corporation, Inc., Successor in Interest to Akuliuk Corporation. Notice of the decision will also be published four times in the Arctic Sounder.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until October 15, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Hillary Woods,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E8–21398 Filed 9–12–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–19155–16; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited. The lands are in the vicinity of Koyukuk, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 8 S., R. 4 E.,
Secs. 1 and 2;
Secs. 11 and 12.

Containing approximately 2,141 acres.

T. 7 S., R. 5 E.,
Secs. 24 and 29.

Containing approximately 71 acres.

T. 6 S., R. 6 E.,
Secs. 4, 9, 16, 21, 28, and 31.

Containing approximately 3,747 acres.

T. 7 S., R. 7 E.,
Sec. 30;
Secs. 32 and 33.

Containing approximately 312 acres.
Aggregating approximately 6,271 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until October 15, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, 7 days a week, to contact the Bureau of Land Management.

Jenny M. Anderson,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E8–21403 Filed 9–12–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–025–1990–EX–241A; HAG8–0195]

Notice of Intent To Prepare an Environmental Impact Statement for the Celatom Mine Expansion Plan of Operations From EP Minerals, LLC

AGENCY: Bureau of Land Management, Burns District, Three Rivers Resource Area.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 and surface management regulations at 43 CFR part 3809 and 43 CFR part 3715 for operations authorized by the mining laws on public lands, the Bureau of Land Management (BLM) is initiating preparation of an Environmental Impact Statement (EIS) to analyze potential environmental effects resulting from proposed expansion of an existing diatomite mine.

DATES: Scoping comments will be accepted for 45 days following publication of this notice. The scoping comments will be used as BLM prepares the Draft EIS. Public notice will be provided when the Draft EIS becomes available in 2009.

FOR FURTHER INFORMATION CONTACT: For further information or to have your name added to our mailing list, contact Celatom Mine Expansion EIS Lead, Bureau of Land Management, Burns District Office, 28910, Highway 20 West, Hines, Oregon 97738; (541) 573–4400; Fax (541) 573–4411; or e-mail (*OREPCME@blm.gov*). Documents pertinent to this project may be examined at the Burns District Office west of Hines, Oregon, during regular business hours, 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The Celatom Mine is currently on Federal, State, and private land covering approximately 450 acres. On Federal land it is operating under a Mine Plan of Operations received by Burns District BLM in 1984 that was approved by BLM after completion of an Environmental Assessment in 1985. Proposed expansion of the Celatom Mine and changes in mining methods require additional environmental analysis. The existing disturbance, coupled with proposed mine expansion and areas proposed for exploratory drilling, encompasses 8,115 acres of public land managed by BLM, 1,280 acres of state

land, 1,640 acres of private land, and 1,600 acres of private surface estate with Federal mineral estate patented under the Stock Raising Homestead Act. The mine area is located almost entirely in Three Rivers Resource Area of Burns District BLM with 35 acres in Vale District BLM.

An interdisciplinary approach will be used to develop the EIS in order to consider the variety of resource issues and concerns identified through the scoping process. Disciplines involved in the planning process will include (but not be limited to) those with expertise in air quality, American Indian traditional practices, biological soil crusts, cultural heritage, fire management, fisheries, grazing management, migratory birds, minerals, noxious weeds, recreation, soils, transportation/roads, vegetation, visual resources, water quality, riparian zones, wildlife, and wilderness characteristics.

Public Participation

Cooperating agencies having specific expertise or interests in the project are invited to participate. The public and interest groups will have every opportunity to participate during formal comment periods. In addition, public meetings will be held during the public comment period for the Draft EIS. Public meetings will be held in Burns, Oregon, and Vale, Oregon, plus other communities if the interest warrants. Early participation is encouraged and will help determine the future management of the Celatom Mine. Meetings and comment deadlines will be announced through the local news media and the Burns BLM Web site (*http://www.blm.gov/or/districts/burns*). Written comments will be accepted throughout the planning process at the address above. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Background Information

The Celatom Mine currently consists of three open pit mines located within four miles of each other in Harney and Malheur Counties, Oregon. One mine is on land managed by BLM's Burns District; another mine is on land managed by the State of Oregon, and the third mine is on private land. EP Minerals excavates diatomaceous earth during the summer, stockpiles ore and waste rock in the vicinity of each mine, and hauls the ore approximately 60 miles year-round to their mill located on private land west of Vale, Oregon. Some ore is stockpiled at a site on land administered by BLM in the vicinity of the mill. Mill waste is backhauled to the mine site and used in backfilling the open pits as part of reclamation.

Brendan J. Cain,

Acting Burns District Manager.

[FR Doc. E8–21491 Filed 9–12–08; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–680–1430–ET; CACA 50194]

Notice of Proposed Legislative Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of withdrawal application and segregation.

SUMMARY: The Act of February 28, 1958 (43 U.S.C. 155–158), sometimes referred to as the Engle Act, places on the Secretary of the Interior the responsibility to process Department of Defense applications for national defense withdrawals, reservations or restrictions aggregating 5,000 acres or more for any one project or facility. These withdrawals, reservations or restrictions may only be made by an act of Congress, except in time of war or national emergency declared by the President or the Congress and except as otherwise expressly provided in the Act of February 28, 1958.

The U.S. Department of the Navy, in accordance with the Engle Act, has filed an application requesting the Secretary of the Interior to process a proposed legislative withdrawal and reservation of public lands for military training exercises involving the Marine Corps Air Ground Combat Center at Twentynine Palms, San Bernardino County, California. The proposal seeks the transfer of jurisdiction and the withdrawal of approximately 365,906 acres of public lands and approximately 507 acres of Federal subsurface mineral estate from all forms of appropriation under the public land laws, including surface entry, mining, mineral leasing, and the Materials Act of 1947.

This notice temporarily segregates for two years the public lands and mineral estate described from settlement, sale, location, or entry under the public land laws, including the mining laws, and the operation of the mineral leasing laws and the Materials Act of 1947. In addition, the surface estate of the 507 acres of mineral estate and the surface and mineral estate of an approximately 72,186 acres of other non-federally owned property in the proposed withdrawal area, if they should be acquired by or returned to the United States by any means, would also be included in the proposed withdrawal and subject to the temporary segregation authorized by this notice.

DATES: Comments should be received on or before December 15, 2008. In addition, at least one public meeting will be held during the comment period to help the public understand both the proposed action and the decision-making processes. The public meeting will be announced at least 30 days in advance through local news media, public notices, mailings, and agency Web sites.

ADDRESSES: Comments should be sent to Roxie Trost, Field Manager, Barstow Field Office, 2601 Barstow Road, Barstow, California 92311.

FOR FURTHER INFORMATION CONTACT: Roxie Trost, BLM Barstow Field Office, 760–252–6000; or Joseph Ross, USMC MCAGCC, 760–830–7683.

SUPPLEMENTARY INFORMATION: Acting on behalf of the U.S. Marine Corps (USMC), the Department of the Navy has filed an application with the Bureau of Land Management (BLM) requesting the Secretary of the Interior to process a legislative withdrawal pursuant to the Engle Act (43 U.S.C. 155–158). The proposal would withdraw the following areas, as described below, and located adjacent to the exterior boundaries of the USMC's Marine Corps Air Ground Combat Center (MCAGCC), located in Twentynine Palms, California:

1. *Federally owned surface and mineral estate:* Subject to valid existing rights, the following described federally owned surface and mineral estate are withdrawn from settlement, sale, location or entry under the public land laws, including the mining laws, and to the operation of the mineral leasing laws and the Materials Act of 1947:

All Are San Bernardino Meridian

Western Expansion Area

T. 4 N., R. 2 E.,
Sec. 1, all;
Sec. 2, lots 3 to 90, inclusive.
T. 5 N., R. 2 E.,
Secs. 1 to 2, all, inclusive;
Secs. 11 to 14, all, inclusive;
Secs. 23 to 26, all, inclusive;
Sec. 35, all.
T. 6 N., R. 2 E.,

Sec. 1, SE¼;
Sec. 12, E½;
Sec. 13, all;
Secs. 23 to 26, all, inclusive;
Sec. 35, all.
T. 4 N., R. 3 E.,
Sec. 1, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, NW¼SW¼, and SE¼;
Sec. 2, all;
Sec. 3, E½ of lot 1 of NE¼, lot 2 of NE¼, lot 2 of NW¼, and S½S½;
Sec. 4, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, SW¼, and S½SE¼;
Secs 5 to 6, all, inclusive;
Sec. 7, E½;
Secs. 8 to 9, all, inclusive;
Sec. 10, N½N½;
Sec. 11, N½ and SW¼;
Sec. 12, N½ and SE¼;
Sec. 13, S½;
Sec. 14, SE¼;
Sec. 15, N½.
T. 5 N., R. 3 E.,
Secs. 2 to 6, all, inclusive;
Sec. 8, E½;
Secs. 9 to 15, all, inclusive;
Sec. 16, N½ and SE¼;
Sec. 17, NE¼;
Sec. 21, E½;
Secs. 22 to 28, all, inclusive;
Sec. 29, NE¼;
Sec. 33, all;
Sec. 34, W½;
Sec. 35, NE¼; and the following whole or partial sections which are all protracted
Sec. 7, all;
Sec. 8, W½;
Sec. 16, SW¼;
Sec. 17, NW¼ and S½;
Secs. 18 to 20, all, inclusive;
Sec. 21, W½;
Sec. 29, NW¼ and S½;
Secs. 30 to 32, all, inclusive;
Sec. 34, E½;
Sec. 35, NW¼ and S½;
Sec. 36, SW¼.
T. 6 N., R. 3 E.,
Sec. 1, all except for S½ of lot 4;
Secs. 2 to 3, all, inclusive;
Sec. 4, all except for Mineral Survey no. 6716;
Secs. 5 to 9, all, inclusive;
Secs. 10 to 11, all except for Mineral Survey no. 6717, inclusive;
Secs. 12 to 15, all, inclusive;
Secs. 17 to 24, all, inclusive;
Secs. 26 to 30, all, inclusive;
Sec. 31, all except for Mineral Survey no. 5878;
Secs. 32 to 35, all, inclusive.
T. 3 N., R. 4 E.,
Sec. 1, all.
T. 4 N., R. 4 E.,
Secs. 1 to 15, all, inclusive;
Sec. 17, all;
Sec. 18, N½;
Sec. 20, N½;
Secs. 21 to 27, all, inclusive;
Sec. 28, N½;
Secs. 34 to 35, all, inclusive.
T. 5 N., R. 4 E.,
Secs. 2 to 11, all, inclusive;
Sec. 12, all except for Mineral Survey no. 6336;
Sec. 13, E½, E½E½NW¼, E½SW¼, and E½W½SW¼;
Secs. 14 to 16, all, inclusive;
Sec. 17, NW¼ and S½;
Secs. 18 to 24, all, inclusive;
Sec. 25, N½, SW¼, and W½SE¼;
Sec. 26, lots 1 to 4, inclusive, NW¼, and SE¼;
Sec. 27, N½ and SW¼;
Secs. 28 to 33, all, inclusive;
Sec. 34, W½;
Sec. 35, E½;
Sec. 36, all; and the following partial sections which are all protracted
Sec. 26, SW¼;
Sec. 27, SE¼;
Sec. 34, E½;
Sec. 35, W½.
T. 6 N., R. 4 E.,
Secs. 1 to 15, all, inclusive;
Secs. 17 to 24, all, inclusive;
Sec. 26, all;
Secs. 27 to 28, all except for Mineral Survey nos. 3000 and 3980, inclusive;
Secs. 29 to 35, all, inclusive;
Sec. 36, N½ and SW¼.
T. 3 N., R. 5 E.,
Secs. 1 to 3, all, inclusive;
Sec. 4, lots 1 to 12, inclusive;
Secs. 5 to 6, all, inclusive;
Sec. 9, lots 1 and 2, W½NE¼, NE¼NW¼, E½NW¼NW¼, E½W½NW¼NW¼, W½SW¼NW¼NW¼, NE¼SW¼NW¼, W½SW¼NW¼, W½SE¼SW¼NW¼, E½SE¼NW¼, W½NW¼SE¼NW¼, and E½SW¼SE¼NW¼;
Sec. 10, lots 1 to 7, inclusive, SW¼NE¼, S½ NW¼, and W½SW¼.
Sec. 11, all;
Sec. 12, lots 1 to 12, inclusive, NE¼NE¼SE¼, E½W½NE¼SE¼, E½NE¼NW¼SE¼, E½W½NW¼SE¼, W½SE¼NW¼SE¼, W½E½SW¼SE¼, NW¼SW¼SE¼, SW¼SE¼SE¼, and W½SE¼SE¼SE¼.
T. 4 N., R. 5 E.,
Secs. 2 to 9, all, inclusive;
Secs. 11 to 12, all, inclusive;
Sec. 16, all; and the following sections which are all protracted
Sec. 10, all;
Secs. 13 to 35, all, inclusive.
T. 5 N., R. 5 E.,
Secs. 4 to 5, all, inclusive;
Sec. 6, lots 1 to 10, inclusive, SE¼NW¼, E½SW¼, N½SE¼, and SW¼SE¼;
Sec. 7, lots 1 to 4, inclusive, lots 6 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 8, all;
Secs. 14 to 15, all, inclusive;
Secs. 18 to 20, all, inclusive;
Secs. 22 to 23, all, inclusive;
Secs. 26 to 28, all, inclusive;
Secs. 30 to 32, all, inclusive;
Secs. 34 to 35, all, inclusive.
T. 6 N., R. 5 E.,
Secs. 17 to 20, all, inclusive;
Secs. 29 to 32, all, inclusive.

Southern Expansion Area

T. 2 N., R. 9 E.,
Sec. 25, all;
Sec. 26, all except for N½NW¼SW¼SW¼;
Sec. 27, E½ except for W½SE¼SE¼SE¼;
Sec. 34, S½NE¼NE¼NE¼, SE¼NE¼NE¼, W½NE¼NE¼, NW¼NE¼, N½SW¼NE¼, W½SE¼SE¼NE¼, W½SW¼SW¼NE¼, N½N½SE¼NE¼, E½NW¼, E½NE¼NE¼SW¼, W½W½NW¼SE¼, W½SE¼NE¼SW¼, NE¼NE¼SW¼, SW¼NE¼SW¼, N½NE¼SE¼, SE¼NE¼SE¼, E½SW¼NE¼SE¼;
Sec. 35, N½ except for N½NE¼NE¼NE¼ and S½SW¼NW¼NE¼.
T. 2 N., R. 10 E.,
Secs. 2 to 11, all, inclusive;
Sec. 14, that portion lying north and west of the boundary of the Cleghorn Lakes Wilderness Area;
Sec. 15, all;
Secs. 17 to 22, all, inclusive;
Sec. 23, that portion lying west of the boundary of the Cleghorn Lakes Wilderness Area;
Sec. 26, that portion lying west and south of the boundary of the Cleghorn Lakes Wilderness Area;
Secs. 27 to 35, all, inclusive.

Eastern Expansion Area

T. 4 N., R. 11 E.,
Secs. 1 to 2, all, inclusive;
Secs. 11 to 12, all, inclusive;
Sec. 14, all.
T. 5 N., R. 11 E.,
Secs. 1 to 2, all, inclusive;
Secs. 11 to 14, all, inclusive;
Secs. 23 to 26, all, inclusive;
Sec. 35, all.
T. 6 N., R. 11 E.,
Sec. 35, that portion lying south of the Historic Route 66 Corridor.
T. 3 N., R. 12 E.,
Secs. 1 to 3, all, inclusive;
Secs. 10 to 15, all, inclusive;
Secs. 22 to 24, all, inclusive;
Sec. 25, that portion lying west of the boundary of the Sheephole Valley Wilderness Area;
Secs. 26 to 27, all, inclusive;
Sec. 34, that portion lying north and east of the boundary of Cleghorn Lakes Wilderness Area;
Sec. 35, all, inclusive.
T. 4 N., R. 12 E.,
Secs. 1 to 8, all, inclusive;
Secs. 10 to 12, all, inclusive;
Secs. 14 to 15, all, inclusive;
Sec. 18, all except for Mineral Survey no. 5802;
Sec. 19, N½ except for Mineral Survey nos. 5802 and 5805;
Sec. 21, E½;
Secs. 23 to 27, all, inclusive;
Sec. 28, E½;
Secs. 34 to 35, all, inclusive.
T. 5 N., R. 12 E.,
Sec. 2, that portion lying south of the Historic Route 66 Corridor;
Secs. 3 to 4, those portions lying south of the Historic Route 66 Corridor except for the lands conveyed to U. S. Gypsum Company by patent number 1000677, inclusive;
Sec. 5, lots 3 to 4, inclusive, lots 15 to 22, inclusive, and lots 31 to 38, inclusive;
Sec. 6, that portion lying south of the Historic Route 66 Corridor;
Sec. 7, all;
Sec. 8, all except for the land conveyed to U. S. Gypsum Company by patent number 1000678;

Sec. 9, all;
Secs. 10 to 11, all except the lands conveyed to U. S. Gypsum Company by patent number 1000677, inclusive;
Secs. 12 to 15, all, inclusive;
Sec. 17, all except the lands conveyed to U. S. Gypsum Company by patent number 1000678;
Sec. 18, all;
Secs. 19 to 20, all except the lands conveyed to U. S. Gypsum Company by patent number 1000678, inclusive;
Secs. 21 to 27, all, inclusive;
Sec. 28, N½ and SW¼;
Secs. 29 to 30, all except the lands conveyed to U. S. Gypsum Company by patent number 1000678, inclusive;
Secs. 31 to 35, all, inclusive.

T. 3 N., R. 13 E.,
Sec. 4, that portion lying west of the Sheephole Valley Wilderness Area;
Secs. 5 to 7, all, inclusive;
Sec. 8, that portion lying west of the Sheephole Valley Wilderness Area;
Secs. 17 to 19, those portions lying west of the Sheephole Valley Wilderness Area, inclusive.

T. 4 N., R. 13 E.,
Secs. 1 to 4, all, inclusive;
Secs. 6 to 15, all, inclusive;
Secs. 17 to 22, all, inclusive;
Secs. 23 to 24, those portions lying northwesterly of the Sheephole Valley Wilderness Area, inclusive;
Sec. 27, that portion lying northwesterly of the Sheephole Valley Wilderness Area;
Secs. 28 to 32, all, inclusive;
Secs. 33 to 34, that portion lying northwesterly of the Sheephole Valley Wilderness Area, inclusive.

T. 5 N., R. 13 E.,
Secs. 2 to 4, all, inclusive;
Secs. 6 to 8, all, inclusive;
Secs. 10 to 12, all, inclusive;
Secs. 13 to 14, all, inclusive;
Secs. 18 to 20, all, inclusive;
Sec. 22, W½;
Secs. 23 to 28, all, inclusive;
Secs. 30 to 32, all, inclusive;
Secs. 34 to 35, all, inclusive.

T. 3 N., R. 14 E.,
Secs. 1 to 2, all, inclusive;
Secs. 3 to 4, those portions lying east of the Sheephole Valley Wilderness Area, inclusive;
Sec. 10, that portion lying east of the Sheephole Valley Wilderness Area;
Secs. 11 to 13, all, inclusive;
Secs. 14 to 15, those portions lying east of the Sheephole Valley Wilderness Area, inclusive;
Sec. 23, that portion lying east of the Sheephole Valley Wilderness Area;
Sec. 24, all;
Secs. 25 to 26, those portions lying east of the Sheephole Valley Wilderness Area, inclusive;
Sec. 36, that portion of NW¼ lying east of the Sheephole Valley Wilderness Area.

T. 4 N., R. 14 E.,
Secs. 6 to 8, all, inclusive;
Secs. 10 to 12, all, inclusive;
Secs. 14 to 15, all, inclusive;
Secs. 17 to 18, all, inclusive;
Sec. 20, that portion lying northeasterly of the Sheephole Valley Wilderness Area;
Secs. 21 to 24, all, inclusive;
Sec. 25, that portion lying northwesterly of the Cadiz Dunes Wilderness Area;
Secs. 26 to 28, all, inclusive;
Sec. 29, that portion lying northeasterly of the Sheephole Valley Wilderness Area;
Secs. 33 to 35, all, inclusive.

T. 5 N., R. 14 E.,
Secs. 1 to 4, all, inclusive;
Secs. 6 to 7, all, inclusive;
Sec. 10, all;
Sec. 11, E½NE¼NE¼, W½NE¼, NW¼, and S½;
Sec. 12, all;
Secs. 14 to 15, all, inclusive;
Secs. 30 to 31, all, inclusive.

T. 2 N., R. 15 E.,
Secs. 4 to 5, all, inclusive;
Secs. 6 to 8, those portions lying northeasterly of the Sheephole Valley Wilderness Area, inclusive.

T. 3 N., R. 15 E.,
Sec. 15, that portion lying west of the Cadiz Dunes Wilderness Area;
Secs. 18 to 20, all, inclusive;
Sec. 22, that portion lying west of the Cadiz Dunes Wilderness Area;
Secs. 25 to 28, all, inclusive;
Secs. 30 to 32, all, inclusive;
Sec. 34, N½;
Sec. 35, N½ and SE¼.

T. 4 E., R. 15 E.,
Secs. 1 to 4, all, inclusive;
Sec. 5, all except for railroad rights-of-way;
Secs. 6 to 8, all, inclusive;
Sec. 9, all except for railroad rights-of-way;
Secs. 10 to 15, all, inclusive;
Secs. 18 to 21, all, inclusive;
Secs. 22 to 25, those portions lying northwesterly or northeasterly of the Cadiz Dunes Wilderness Area, inclusive;
Secs. 28 to 30, those portions lying northwesterly or northeasterly of the Cadiz Dunes Wilderness Area, inclusive;
Sec. 32, that portion lying northeasterly of the Cadiz Dunes Wilderness Area.

T. 5 N., R. 15 E.,
Secs. 1 to 4, all, inclusive;
Secs. 6 to 7, all, inclusive;
Sec. 9, SE¼SE¼;
Secs. 10 to 15, all, inclusive;
Secs. 19 to 35, all, inclusive.

T. 3 N., R. 16 E.,
Sec. 3, that portion lying northeasterly of the pipeline authorized by CACA 14013 and lying northwesterly of the Old Woman Mountains Wilderness Area.

T. 4 N., R. 16 E.,
Secs. 4 to 5, those portions lying southwesterly of the Old Woman Mountains Wilderness Area, inclusive;
Secs. 6 to 8, all, inclusive;
Sec. 9, that portion lying southwesterly of the Old Woman Mountains Wilderness Area;
Sec. 16, that portion lying southwesterly of the Old Woman Mountains Wilderness Area;
Secs. 17 to 20, all, inclusive;
Secs. 21 to 22, those portions lying southwesterly of the Old Woman Mountains Wilderness Area, inclusive;
Secs. 27, that portion lying southwesterly of the Old Woman Mountains Wilderness Area;
Sec. 28, all;
Sec. 29, all except for that portion contained in railroad right-of-way containing 17 acres;
Secs. 30 to 32, those portions lying northeasterly of the Cadiz Dunes Wilderness Area, inclusive;
Sec. 33, that portion lying northeasterly of the Cadiz Dunes Wilderness Area except for that portion contained in railroad right-of-way containing 14.55 acres;
Sec. 34, that portion lying southwesterly of the Old Woman Mountains Wilderness Area.

T. 5 N., R. 16 E.,
Secs. 6 to 7, those portions lying westerly of the Old Woman Mountains Wilderness Area, inclusive;
Secs. 18 to 20, those portions lying westerly of the Old Woman Mountains Wilderness Area, inclusive;
Sec. 29, that portion lying westerly of the Old Woman Mountains Wilderness Area;
Secs. 30 to 31, all, inclusive;
Sec. 32, that portion lying westerly of the Old Woman Mountains Wilderness Area.

Northern Expansion Area

T. 6 N., R. 7 E.,
Sec, 12, all.

T. 7 N., R. 7 E.,
Sec. 24, all.

The areas described aggregate 365,906 acres, more or less.

2. *Federally owned mineral estate and non-federally owned surface estate.*

Subject to valid existing rights, the following described federally owned mineral estate is hereby withdrawn from settlement, sale, location or entry under the public land laws, including the mining laws, and to the operations of the mineral leasing laws and the Materials Act of 1947:

All Are San Bernardino Meridian

Southern Expansion Area

T. 2 N., R. 9 E.,
Sec. 26, N¼NW¼SW¼SW¼;
Sec. 27, W½SE¼SE¼SE¼;
Sec. 35, N½NE¼NE¼NE¼ and S½SW¼NW¼NE¼.

Eastern Expansion Area

T. 5 N., R. 12 E.,
Sec. 5, lot 1 of NE¼, W½ of lot 1 of NW¼, lots 5 and 6 inclusive, SE¼NW¼, and S½.

The areas described aggregate 507 acres, more or less.

In the event, the non-federally owned surface estate, of the approximately 507 acres described above, returns to public ownership, those lands would be subject to the terms and conditions of this withdrawal as described above.

3. *Non-federally owned surface and mineral estate.*

The following described non-federally owned lands are located within the proposed boundaries of the proposed withdrawal areas:

(a) Privately owned surface and mineral estate:

All Are San Bernardino Meridian

Western Expansion Area

T. 5 N., R. 2 E.,
Sec. 36, all.
T. 6 N., R. 2 E.,
Sec. 36, all.
T. 4 N., R. 3 E.,
Sec. 10, S½N½ and S½;
Sec. 11, SE¼;
Sec. 12, SW¼;
Sec. 13, N½.
T. 5 N., R. 3 E.,
Sec. 1, all;
Sec. 36, N½ and SE¼.
T. 6 N., R. 3 E.,
Sec. 1, S½ of lot 4;
Sec. 4, that land described by metes and bounds in patent number 04–67–0117 and containing 180.445 acres, more or less;
Secs. 10 to 11, that land described by metes and bounds in patent number 04–68–0173 and containing 20.104 acres, more or less, inclusive;
Sec. 25, all;
Sec. 31, that land described by metes and bounds in patent number 994392 and containing 41.322 acres, more or less;
Sec. 36, all.
T. 4 N., R. 4 E.,
Sec. 16, N½ and SE¼;
Sec. 18, S½;
Sec. 36, all.
T. 5 N., R. 4 E.,
Sec. 1, all;
Sec. 12, E½NE¼ and N½SE¼;
Sec. 13, W½NW¼, west 20 rods of the E½NW¼, and W½W½SW¼;
Sec. 17, NE¼;
Sec. 25, lots 1 to 8, inclusive, and E½SE¼.
T. 6 N., R. 4 E.,
Sec. 16, all;
Sec. 25, all;
Secs. 27 to 28, that land described by metes and bounds in patent numbers 24783, 38438, and 38980, and containing 151.250 acres, more or less, inclusive;
Sec. 36, SE¼.
T. 3 N., R. 5 E.,
Sec. 4, W½NW¼NE¼SW¼, NW¼NE¼SW¼, W½SE¼NE¼SW¼, E½NE¼SW¼SW¼, W½NE¼SW¼SW¼, E½SW¼SW¼SW¼, W½SE¼SW¼SW¼, and W½SE¼SE¼SW¼;
Sec. 9, W½NW¼NW¼NW¼, E½SE¼SW¼NW¼, E½NW¼SE¼NW¼, and W½SW¼SE¼NW¼;
Sec. 12, SE¼NE¼SE¼, W½W½NE¼SE¼, NW¼NE¼NW¼SE¼, SE¼SE¼NW¼SE¼, W½W½NW¼SE¼, E½E½SW¼SE¼, SW¼SW¼SE¼, N½SE¼SE¼, SW¼SE¼SE¼, and E½SE¼SE¼SE¼.
T. 4 N., R. 5 E.,
Sec. 1, all;
Sec. 36, all.
T. 5 N., R. 5 E.,
Sec. 6, SE¼SE¼;
Sec. 7, lot 5;
Sec. 9, all;
Sec. 17, all;
Sec. 21, all;
Sec. 29, all;
Sec. 33, all.

Southern Expansion Area

T. 2 N., R. 9 E.,
Sec. 26, N½NW¼SW¼SW¼;
Sec. 27, W½SE¼SE¼SE¼;
Sec. 34, N½NE¼NE¼NE¼, E½SW¼SW¼NE¼, E½SE¼SW¼NE¼, S½N½SE¼NE¼, N½S½SE¼NE¼, S½SW¼SE¼NE¼, W½NE¼NE¼SW¼, E½SE¼NE¼SW¼, S½S½, E½W½NW¼SE¼, E½NW¼SE¼, and W½SW¼NE¼SE¼;
Sec. 35, N½NE¼NE¼NE¼, S½SW¼NE¼NE¼, and S½;
Sec. 36, all.
T. 2 N., R. 10 E.,
Sec. 36, all.

Eastern Expansion Area

T. 4 N., R. 11 E.,
Sec. 13, all.
T. 5 N., R. 11 E.,
Sec. 36, all.
T. 6 N., R. 11 E.,
Sec. 35, that portion lying south of the Historic Route 66 Corridor.
T. 3 N., R. 12 E.,
Sec. 36, that portion lying west of the boundary of the Sheephold Valley Wilderness Area.
T. 4 N., R. 12 E.,
Sec. 9, all;
Sec. 13, all;
Secs. 16 to 17, all, inclusive;
Secs. 18 to 19, that land described by metes and bounds in patent numbers 973412 and 968382, and containing 82.310 acres, more or less, inclusive;
Sec. 22, all;
Sec. 36, all.
T. 5 N., R. 12 E.,
Sec. 1, all;
Secs. 3, 4, 10, and 11, all the lands conveyed to U. S. Gypsum Company by patent number 1000677, containing 480 acres, inclusive;
Sec. 5, lot 1 of NE¼, W½ of lot 1 of NW¼, W½ of lot 2 of NE¼, W½ of lot 2 of NW¼, and S½;
Secs. 8, 17, 19, 20, 29, and 30, all the lands conveyed to U. S. Gypsum Company by patent number 1000678, containing 1, 342.40 acres, inclusive;
Sec. 16, all;
Sec. 28, SE½;
Sec. 36, all.
T. 4 N., R. 13 E.,
Sec. 5, all;
Sec. 16, all.
T. 5 N., R. 13 E.,
Sec. 1, all;
Sec. 5, all;
Sec. 9, all;
Sec. 13, all;
Secs. 16 to 17, all, inclusive;
Sec. 21, all;
Sec. 22, E½;
Sec. 29, all;
Sec. 33, all;
Sec. 36, SW½.
T. 3 N., R. 14 E.,
Sec. 36, that portion lying east of the Sheephole Valley Wilderness Area.
T. 4 N., R. 14 E.,
Secs. 1 to 5, all, inclusive;
Sec. 9, all;
Sec. 13, all;
Sec. 16, all;
Sec. 36, that portion lying east of the Sheephole Valley Wilderness Area.
T. 5 N., R. 14 E.,
Sec. 5, all;
Secs. 8 to 9, all, inclusive;
Sec. 11, W½NE¼NE¼ and SE¼NE¼;
Sec. 13, all;
Secs. 16 to 29, all, inclusive;
Secs. 32 to 36, all, inclusive.
T. 3 N., R. 15 E.,
Sec. 17, all;
Sec. 21, all;
Sec. 29, all;
Sec. 33, all;
Sec. 34, S½.
T. 4 N., R. 15 E.,
Secs. 16 to 17, all, inclusive;
Sec. 33, that portion lying northwesterly of the Sheephole Valley Wilderness Area.
T. 5 N., R. 15 E.,
Sec. 5, all;
Sec. 8, all;
Sec. 9, N½, SW¼, N½SE¼, and SW¼SE¼;
Secs. 17 to 18, all, inclusive.
T. 4 N., R. 16E
Sec. 29, that portion contained in railroad right-of-way containing 17 acres;
Sec. 33, that portion contained in railroad right-of-way containing 14.55 acres.
T. 5 N., R. 16 E.,
Sec. 29, that portion lying southwesterly of the Old Woman Mountains Wilderness Area.

Northern Expansion Area

T. 6 N., R. 7 E.,
Sec. 1, all;
Sec. 13, all.
The areas described aggregate 64,407 acres, more or less.

(b) State of California owned surface and mineral estate:

All Are San Bernardino Meridian

Western Expansion Area

T. 4 N., R. 3 E.,
Sec. 1, NE¼SW¼ and S½SW¼;
Sec. 3, SW¼NE¼, S½NW¼, and N½S½;
Sec. 4, N½SE¼;
Sec. 14, N½;
Sec. 15, S½.
T. 6 N., R. 3 E.,
Sec. 16, all.
T. 4 N., R. 4 E.,
Sec. 16, SW¼;
Sec. 19, E½E½;
Sec. 20, S½;
Sec. 28, S½;
Sec. 29, E½.
T. 5 N., R. 5 E.,
Sec. 16, all.

Southern Expansion Area

T. 2 N., R. 10 E.,
Sec. 16, all.

Eastern Expansion Area

T. 5 N., R. 13 E.,
Sec. 36, N½ and SE¼.

T. 3 N., R. 15 E.,
Sec. 16, that portion lying southwesterly of the Cadiz Dunes Wilderness Area.
T. 5 N., R. 15 E.,
Sec. 16, all;
Sec. 36, all.

Northern Expansion Area

T. 7 N., R. 7 E.,
Sec. 36, all.

The areas described aggregate 7,779 acres, more or less.

In the event that these non-federally owned lands return to public ownership in the future, they would be subject to the terms and conditions described above in ''1. Federally owned surface and mineral estate.''

The purpose of the proposed legislative withdrawal is to withdraw and reserve the lands for use as a military training range, involving live-fire exercises, necessary for national security. The legislative withdrawal would provide sufficient area for realistic integrated training to a Marine Expeditionary Brigade (MEB) sized Marine Air Ground Task Force, the USMC's premier force for responding to smaller scale contingencies. Effective training of MEBs is critical to ensuring the full spectrum of military operations. The withdrawal would be established by an Act of Congress, and approved by the President. The duration of the legislative withdrawal would be determined by Congress. The Department of the Navy has indicated that the use of a right-of-way or cooperative agreement would not provide adequate authorization for safety and control of access for the use of these lands due to the broad scope of military training exercises.

The USMC analyzed alternative sites in three regions of the United States (*i.e.,* Middle Atlantic Coast—North Carolina and Virginia; Gulf of Mexico—Florida and Louisiana; and Southwest—California and Arizona). The USMC concluded that expanding the USMC's MCAGCC, located in Twentynine Palms, California was the only reasonable and feasible option. The lands hereinabove described, have been selected by the USMC for the proposed legislative withdrawal, because they are located adjacent to the existing exterior boundaries of the USMC's MCAGCC, located in Twentynine Palms, California. The application and the records relating to the application can be examined by interested persons at the BLM Barstow Field Office, 2601 Barstow Road, Barstow, California 92311.

On or before December 15, 2008, all persons who wish to submit comments, suggestions, or objections in connection with the proposed legislative withdrawal may present their views in writing to the BLM, Field Manager, Barstow Field Office, 2601 Barstow Road, Barstow, California 92311.

Comments, including names and street addresses of respondents, will be available for public review at the BLM Barstow Field Office at the address above during regular business hours.

Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information from public review, we cannot guarantee that we will be able to do so.

This withdrawal proposal will be processed in accordance with the regulations set forth in 43 CFR part 2300.

Until September 15, 2010, the lands will be segregated as specified above unless the withdrawal application is denied or canceled or the withdrawal is approved prior to that date. Land uses currently authorized or permitted may continue during the segregation period. If the proposed legislative withdrawal has been submitted to Congress but not enacted into law by the end of the 2-year segregation period, consideration will be given to entertaining an application for a temporary withdrawal in aid of pending legislation.

During the segregation period, BLM may, after consulting with the USMC, allow uses of a temporary nature that are compatible with the military purposes for which the land is being withdrawn.

(Authority: 43 CFR 2310.3–1(b)(1))

Dated: September 9, 2008.

Thomas Pogacnik,

Acting Deputy State Director, Natural Resources (CA–930), Bureau of Land Management.

[FR Doc. E8–21397 Filed 9–12–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–920–1310–08; TXNM 118200]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease TXNM 118200

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the Class II provisions of Title IV, Public Law 97–451, the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease TXNM 118200 from the lessee, Woodward Development LLC, for lands in Houston County, Texas. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Lourdes B. Ortiz, BLM, New Mexico State Office, at (505) 438–7586.

SUPPLEMENTARY INFORMATION: No valid lease has been issued that affect the lands. The lessee agrees to new lease terms for rentals and royalties of $10.00 per acre or fraction thereof, per year, and 16⅔ percent, respectively. The lessee paid the required $500.00 administrative fee for the reinstatement of the lease and $166.00 cost for publishing this Notice in the **Federal Register**. The lessee met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate lease TXNM 118200, effective the date of termination, June 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 9, 2008.

Lourdes B. Ortiz,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. E8–21413 Filed 9–12–08; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–920–1310–08; TXNM 118211]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease TXNM 118211

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the Class II provisions of Title IV, Public Law 97–451, the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease TXNM 118211 from the lessee, Woodward Development LLC, for lands in Houston County, Texas. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Lourdes B. Ortiz, BLM, New Mexico State Office, at (505) 438–7586.

SUPPLEMENTARY INFORMATION: No valid lease has been issued that affects the lands. The lessee agrees to new lease terms for rentals and royalties of $10.00 per acre or fraction thereof, per year, and 16⅔ percent, respectively. The lessee paid the required $500.00 administrative fee for the reinstatement of the lease and $166.00 cost for publishing this Notice in the **Federal Register**. The lessee met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate lease TXNM 118211, effective the date of termination, June 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 9, 2008.

Lourdes B. Ortiz,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. E8–21417 Filed 9–12–08; 8:45 am]

BILLING CODE 4310–FB–P

ACTION: Notice of Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the Class II provisions of Title IV, Public Law 97–451, the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease TXNM 118212 from the lessee, Woodward Development LLC, for lands in Houston County, Texas. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Lourdes B. Ortiz, BLM, New Mexico State Office, at (505) 438–7586.

SUPPLEMENTARY INFORMATION: No valid lease has been issued that affect the lands. The lessee agrees to new lease terms for rentals and royalties of $10.00 per acre or fraction thereof, per year, and 16⅔ percent, respectively. The lessee paid the required $500.00 administrative fee for the reinstatement of the lease and $166.00 cost for publishing this Notice in the **Federal Register**. The lessee met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate lease TXNM 118212, effective the date of termination, June 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 9, 2008.

Lourdes B. Ortiz,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. E8–21424 Filed 9–12–08; 8:45 am]

BILLING CODE 4310–FB–P

ACTION: Notice of Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the Class II provisions of Title IV, Public Law 97–451, the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease TXNM 118213 from the lessee, Woodward Development LLC, for lands in Houston County, Texas. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Lourdes B. Ortiz, BLM, New Mexico State Office, at (505) 438–7586.

SUPPLEMENTARY INFORMATION: No valid lease has been issued that affects the lands. The lessee agrees to new lease terms for rentals and royalties of $10.00 per acre or fraction thereof, per year, and 16⅔ percent, respectively. The lessee paid the required $500.00 administrative fee for the reinstatement of the lease and $166.00 cost for publishing this Notice in the **Federal Register**. The lessee met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate lease TXNM 118213, effective the date of termination, June 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 9, 2008.

Lourdes B. Ortiz,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. E8–21425 Filed 9–12–08; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–920–1310–08; TXNM 118212]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease TXNM 118212

AGENCY: Bureau of Land Management, Interior.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–920–1310–08; TXNM 118213]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease TXNM 118213

AGENCY: Bureau of Land Management, Interior.

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2008–OMM–0038]

MMS Information Collection Activities: 1010–0050 Pipelines and Pipeline Rights-of-Way; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0050).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, Subpart J, Pipelines and Pipeline Rights-of-Way.

DATES: Submit written comments by November 14, 2008.

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

- Electronically: go to *http://www.regulations.gov.* Under the tab More Search Options, click Advanced Docket Search, then select Minerals Management Service from the agency drop-down menu, then click submit. In the Docket ID column, select MMS–2008–OMM–0038 to submit public comments and to view supporting and related materials available for this rulemaking. Information on using *Regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's User Tips link. The MMS will post all comments.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; *Attention:* Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference Information Collection 1010–0050 in your subject line and mark your message for return receipt. Include your name and return address in your message text.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulation and the forms that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart J, Pipelines and Pipeline Rights-of-Way.

Form(s): MMS–149 and MMS–2030.

OMB Control Number: 1010–0050.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and Office of Management and Budget (OMB) Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's (DOI) implementing policy, the Minerals Management Service (MMS) is required to charge the full cost for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. Pipeline rights-of-way and assignments are subject to cost recovery, and MMS regulations specify filing fees for applications.

This submittal concerns the regulations at 30 CFR 250, subpart J, on pipelines and pipeline rights-of-way. It also covers the related Notices to Lessees and Operators (NTLs) that MMS issues to clarify and provide additional guidance on some aspects of the regulations.

Included with this submission is form MMS–149, Assignment of Interest in Federal Pipeline Right-of-Way. Section 250.1018 requires applicants to request approval for assignments in whole or of any lineal segment for a right-of-way grant. The assignee is required to submit this form with the relevant information and pay a service fee for this request.

Also with this submission is form MMS–2030, Outer Continental Shelf Right-of-Way Grant Bond. Section 250.1011(a) requires applicants for, and holders of, a right-of-way to provide and maintain a $300,000 bond (in addition to the bond coverage required under 30 CFR part 256), as well as additional security MMS determines is necessary. Respondents submit form MMS–2030 for these right-of-way grant bonds.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.197, data and information to be made available to the public or for limited inspection. No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS lessees and/or operators and 88 holders of pipeline rights-of-way.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The currently approved annual reporting burden for this collection is 107,874 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart J and related NTL(s)	Reporting & recordkeeping requirements	Hour burden—Non-hour cost burden
1000–1008	Make available to MMS design, construction, operation, maintenance, testing, and repair records on lease-term P/Ls [1].	2
1000(b); 1007(a)	Submit application to install new lease-term pipeline (P/L), including exceptions/departures, consents and notices, required reports, and attachments.	140 $3,100 fee
1000(b), (d); 1007(a); 1009(a); 1011(a); 1015; 1016.	Apply for P/L right-of-way (ROW) grant and installation of new ROW P/L, including exceptions/departures, consents and notices, required reports, and attachments.	140 $2,350 fee
1000(b); 1007(b); 1015; 1017.	Submit application to modify lease-term or ROW P/L or ROW grant, including exceptions/departures; notify operators of deviation.	30 $1,800–L/T fee $3,650–ROW fee
1000(b); 1010(h); 1019	Apply to relinquish P/L ROW grant, including exceptions/departures	8

Citation 30 CFR 250 subpart J and related NTL(s)	Reporting & recordkeeping requirements	Hour burden—Non-hour cost burden
1000(c)(2)	Identify in writing P/L operator on ROW if different from ROW grant holder	.25
1000(c)(3)	Mark specific point on P/L where operating responsibility transfers to transporting operator or depict transfer point on a schematic located on the facility. (Part of application or construction process involving no additional burdens.).	0
1000(c)(4)	Petition to MMS for exceptions to general operations transfer point description	5
1000(c)(8)	Request MMS recognize valves landward of last production facility but still located on OCS as point where MMS regulatory authority begins.	1
1000(c)(12)	Petition to MMS to continue to operate under DOT regulations upstream of last valve on last production facility.	40
1000(c)(13)	Transporting P/L operator petition to DOT and MMS to continue to operate under MMS regulations	40
1004(c)	Place sign on safety equipment identified as ineffective and removed from service	See footnote [2]
1005(a)	Inspect P/L routes for indication of leakage [1], record results, maintain records 2 years [2]	24
1007(a)(4)	Submit required documentation under API RP 17J	150
1008(a), (c), (d), (e), (f), (h).	Notify MMS; as requested submit procedures before performing work; submit post-report on P/L or P/L safety equipment repair, removal from service, analysis results, or potential measurements.	16
1008(b)	Submit P/L construction report	16
1008(e)	The lessee or right-of-way holder must notify the Regional Supervisor before the repair of any pipeline.	$340 fee
1008(g)	Submit plan of corrective action and report of remedial action	16
1010(c)	Notify MMS of any archaeological resource discovery	4
1010(d)	Inform MMS of P/L ROW holder's name and address changes. Not considered information collection under 5 CFR 1320.3(h)(1).	0
1010(g)	Make available to MMS design, construction, operation, maintenance, testing, and repair records on P/L ROW area and improvements [2].	10
1011(a)	Submit surety bond on form MMS–2030	.50
1015	Apply to convert lease-term P/L to ROW grant P/L; notify operators of deviation, including various exceptions/departures.	25 $200 fee
1016	Request opportunity to eliminate conflict when application has been rejected; amend and submit application if needed.	2
1018	Apply for and file application and required information for assignment or transfer for approval (ROW) (Form MMS–149).	.5 $170 fee
1000–1019	General departure and alternative compliance requests not specifically covered elsewhere in subpart J regulations (e.g., protective device re burial).	2

[1] Retaining these records is usual and customary business practice; required burden is minimal to make available to MMS.
[2] These activities are usual and customary practices for prudent operators.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: The currently approved annual non-hour cost burden for collection 1010–0050 is $2,369,400. All of the non-hour cost burdens are for non-refundable filing fees. In:

- § 250.1000(b) applicants must pay a fee of $3,100 for a new L/T pipeline application; $1,800 for a modification to a L/T pipeline application, and $3,650 for a modification to a ROW pipeline application.
- § 250.1008(e) applications must pay a fee of $340 for a pipeline repair notification.
- § 250.1015(a) applicants must pay a $2,350 fee when applying for a pipeline right-of-way grant to install a new pipeline or pay $200 to convert an existing lease-term pipeline into a right-of-way pipeline.
- § 250.1018(b) an applicant must pay a fee of $170 when applying for approval of an assignment of a right-of-way grant.

There are no other non-hour cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the non-hour cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make

any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedure: The MMS's practice is to make comments, including names and addresses of respondents, available for public review. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz, (202) 208–7744.

Dated: September 5, 2008.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. E8–21436 Filed 9–12–08; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Meeting of Concessions Management Advisory Board

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting of Concessions Management Advisory Board.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, Section 10), notice is hereby given that the Concessions Management Advisory Board (the Board) will hold its 19th meeting October 15–16, 2008, at the Water Safety Center, Lake Mead National Recreation Area, Boulder City, Nevada. The meeting will convene Wednesday, October 15 at 9 a.m. and will conclude at 5 p.m. The meeting will reconvene Thursday, October 16 at 9 a.m. and will conclude before 4 p.m.

ADDRESSES: The meeting will be held in the Mead Room of the Water Safety Center, Lake Mead National Recreation Area, Boulder City, Nevada 89005. Park phone number: 702–293–8906.

SUPPLEMENTARY INFORMATION: The Board was established by Title IV, Section 409 of the National Parks Onmibus Management Act of 1998, November 13, 1998 (Pub. L. 105–391). The purpose of the Board is to advise the Secretary and the National Park Service (NPS) on matters relating to management of concessions in the National Park System.

The Board will meet at 9 a.m. Wednesday, October 15th and 9 a.m. on Thursday, October 16th for the regular business meeting and continued discussion on the following subjects:

- Concession Contracting Status Update and Regional Reports
- NPS Prospectus Evaluation Review Process
- Cooperating Association Steering Committee Status Report
- NPS Initiatives —
- Centennial Initiative Update
- National Park Service Tourism Policy Update
- Geo-Tourism Memorandum of Understanding
- VolunTourism Initiative
- Gasoline and Diesel Fuel Costs Issues
- Proposed Leasehold Surrender Interest Regulations Update
- Commercial Use Authorizations Regulations Update
- Superintendents Concession Management Training Update
- DO 35B: Utility Rates
- Carbon Monoxide Safety
- Buy American Committee Report
- National Park Hospitality Association Presentations
- Other business

The meeting will be open to the public, however, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first served basis.

Assistance to Individuals With Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities. If you plan to attend and will require an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least 2 weeks before the scheduled meeting date. Attempts will be made to meet any request(s) we receive after that date, however, we may not be able to make the requested auxiliary aid or service available because of insufficient time to arrange for it.

Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time. Such requests should be made to the Director, National Park Service, Attention: Manager, Concession Program, at least 7 days prior to the meeting. Draft minutes of the meeting will be available for public inspection approximately 6 weeks after the meeting, at the Concession Program office located at 1201 Eye Street, NW., 11th Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: National Park Service, Concession Program, 1201 Eye Street, NW., Washington, DC 20240, Telephone: 202/513–7151.

Dated: September 3, 2008.

Sue Masica,

Chief of Staff, National Park Service.

[FR Doc. E8–21277 Filed 9–12–08; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Route 66 Corridor Preservation Program Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Route 66 Corridor Preservation Program Advisory Council will be held November 6 and 7, 2008, in St. Louis, Missouri. The meeting on November 6 will be held from 8:30 to 2:30 p.m. at the Roberts Mayfair Hotel, 806 St. Charles Street, St. Louis, Missouri. The meeting on November 7 will be held from 9 a.m. to 5 p.m. at the Old Courthouse (part of the Jefferson National Expansion Memorial) located at 11 North 4 Street in St. Louis.

The Route 66 Corridor Preservation Program Advisory Council was established to consult with the Secretary of the Interior on matters relating to the Route 66 Corridor Preservation Program, including recommendations for ways to best preserve important properties along Route 66, recommendations for grant and cost-share awards to eligible applicants owning or administering historic properties along the Route 66 Corridor, and recommendations for technical assistance provided by the National Park Service to partners along the route.

The matters to be discussed include:

—Committee report on accountability and measurement
—Committee report on education and outreach
—Committee report on preservation management
—Strategic media initiative
—Report on preliminary economic impacts of heritage tourism along Route 66
—Report on motel preservation initiatives along Route 66

—Preservation of historic bridges along Route 66

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. The public comment period is scheduled from 9–10 a.m. on Friday, November 7. Any member of the public may file a written statement concerning the matters to be discussed with Michael Taylor, Route 66 Corridor Preservation Program Manager.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Michael Taylor, Route 66 Corridor Preservation Program Manager, National Trails System—Santa Fe, National Park Service, P.O. Box 728, Santa Fe, New Mexico 87504–0728, telephone 505–988–6742. Minutes of the meeting will be available for public inspection at the Route 66 Corridor Preservation Program Office, located in Room 122, Old Santa Fe Trail Building, 1100 Old Santa Fe Trail, Santa Fe, New Mexico.

Dated: August 25, 2008.

Michael Romero Taylor,

Designated Federal Officer, Route 66 Corridor Preservation Program.

[FR Doc. E8–21276 Filed 9–12–08; 8:45 am]

BILLING CODE 4310–EE–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before August 30, 2008.

Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by September 30, 2008.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ALABAMA

Mobile County

United States Court House and Custom House, 113 St. Joseph St., Mobile, 08000964

COLORADO

Chaffee County

Heister House, 102 Poncha Blvd., Salida, 08000965

FLORIDA

St. Johns County

Stanbury Cottage, 232 St. George St., St. Augustine, 08000966

GEORGIA

Bulloch County

Upper Lott's Creek Primitive Baptist Church and Cemetery, Metter-Portal Hwy. and Westside Rd., Metter, 08000967

Fulton County

General Electric Company Repair Shop Warehouse, 488 Glenn Ave., Fulton, 08000968

Harris County

Copeland, William and Ann, Jr., House, 19444 GA 116, Shiloh, 08000969

NEW JERSEY

Camden County

Mount Peace Cemetery and Funeral Directing Company Cemetery, 329 U.S. Rt. 30, Lawnside, 08000971

Cape May County

U.S. Life-Saving Station No. 35, 11617 2nd Ave., Stone Harbor Borough, 08000970

Somerset County

Vail-Trust House, 225 Greenbrook Rd., Green Brook, 08000972

Warren County

Phillipsburg Commercial Historic District, 29–169 S. Main St., 60–178 S. Main St., 3 Hudson St., 9 and 12–30 Morris St./Main St., 7–11, 17, and 21–27 Union Sq., Phillipsburg Town, 08000973

NORTH CAROLINA

Buncombe County

Proximity Park Historic District, Roughly bounded by Macon Ave., Howland Rd., Woodlink Rd., Charlotte St., and Sunset Trail, Asheville, 08000974

OHIO

Hamilton County

Sedamsville River Road Historic District, 2449–2734 River Rd., 309–317 Mt. Hope and 604 Mt. Echo, Cincinnati, 08000975

Perry County

Shawnee Historic District (Boundary Decrease) (Little Cities of Black Diamonds—Athens, Hocking, Perry Counties MPS) Along Main St., Walnut, St., 2nd and 3rd Sts., Shawnee, 08000978

OREGON

Lane County

Eugene Civic Stadium, 2077 Willamette St., Eugene, 08000977

WISCONSIN

Ashland County

MOONLIGHT shipwreck, (Great Lakes Shipwreck Sites of Wisconsin MPS) Address Restricted, La Pointe, 08000979

Columbia County

Lodi Downtown Historic District, 133, 137–139, 143, 147, 157, and 161–165 S. Main St., Lodi, 08000980

Outagamie County

Appleton Wire Works, 600 S. Atlantic St., Appleton, 08000981

Vilas County

Everett Resort, The, 1269 Everett Rd., Washington, 08000982

[FR Doc. E8–21372 Filed 9–12–08; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0012]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Application for Registration (DEA Form 225); Application for Registration Renewal (DEA Form 225a); Affidavit for Chain Renewal (DEA Form 225B)

ACTION: 60-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until November 14, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information,

please contact Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone (202) 307–7297.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of Information Collection 1117–0012

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:*
Application for Registration (DEA Form 225);
Application for Registration Renewal (DEA Form 225a);
Affidavit for Chain Renewal (DEA Form 225B).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form Number: DEA Form 225, 225a, and 225B;

Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Not-for-Profit Institutions; State, Local or Tribal Government. *Abstract:* The Controlled Substances Act requires all persons who manufacture, distribute, import, export, conduct research or dispense controlled substances to register with DEA. Registration provides a closed system of distribution to control the flow of controlled substances through the distribution chain.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 725 persons complete DEA Form 225 on paper, at 30 minutes per form, for an annual burden of 362.5 hours. It is estimated that 1,397 persons complete DEA Form 225 electronically, at 10 minutes per form, for an annual burden of 232.8 hours. It is estimated that 5,481 persons complete DEA Form 225a on paper, at 30 minutes per form, for an annual burden of 2,740.5 hours. It is estimated that 5,948 persons complete DEA Form 225a electronically, at 10 minutes per form, for an annual burden of 991.3 hours. It is estimated that 4 persons complete DEA Form 225B on paper, at 1 hour per form, for an annual burden of 4 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that this collection will create a burden of 4,331.1 annual burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: September 9, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E8–21441 Filed 9–12–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0014]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Application for Registration (DEA Form 224); Application for Registration Renewal (DEA Form 224a); Affidavit for Chain Renewal (DEA Form 224B)

ACTION: 60–Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until November 14, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone (202) 307–7297.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of Information Collection 1117–0014

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:*
Application for Registration (DEA Form 224);
Application for Registration Renewal (DEA Form 224a);
Affidavit for Chain Renewal (DEA Form 224B).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: DEA Form 224, 224a and 224B; Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-

profit. *Other:* Not-for-Profit Institutions; State, Local or Tribal Government.

Abstract: All firms and individuals who distribute or dispense controlled substances must register with the DEA under the Controlled Substances Act. Registration is needed for control measures over legal handlers of controlled substances and is used to monitor their activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 12,094 persons complete DEA Form 224 on paper, at 12 minutes per form, for an annual burden of 2,418.8 hours. It is estimated that 59,283 persons complete DEA Form 224 electronically, at 8 minutes per form, for an annual burden of 7,904.4 hours. It is estimated that 159,678 persons complete DEA Form 224a on paper, at 12 minutes per form, for an annual burden of 31,935.6 hours. It is estimated that 209,535 persons complete DEA Form 224a electronically, at 4 minutes per form, for an annual burden of 13,969 hours. It is estimated that 16 persons complete DEA Form 224b, at 5 hours per form, for an annual burden of 80 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that this collection will create a burden of 56,307.8 annual burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: September 9, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E8–21442 Filed 9–12–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0015]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Application for Registration (DEA Form 363) and Application for Registration Renewal (DEA Form 363a)

ACTION: 60-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until November 14, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone (202) 307–7297.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview Information Collection 1117–0015

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Registration (DEA Form 363) and Application for Registration Renewal (DEA Form 363a).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: DEA Form 363 and 363a; Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Not-for-profit institutions; State, Local, or Tribal Government. *Abstract:* Practitioners who dispense narcotic drugs to individuals for maintenance or detoxification treatment must register with the DEA under the Narcotic Addiction Treatment Act of 1974. Registration is needed for control measures and is used to prevent diversion.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 33 persons complete DEA Form 363 on paper, at 30 minutes per form, for an annual burden of 16.5 hours. It is estimated that 96 persons complete DEA Form 363 electronically, at 8 minutes per form, for an annual burden of 12.8 hours. It is estimated that 614 persons complete DEA Form 363a on paper, at 30 minutes per form, for an annual burden of 307 hours. It is estimated that 537 persons complete DEA Form 363a electronically, at 8 minutes per form, for an annual burden of 71.6 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that this collection will create a burden of 407.9 annual burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: September 9, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E8–21443 Filed 9–12–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Correction

On August 6, 2008, the Drug Enforcement Administration (DEA) published a Notice of Application for Registration for Chattem Chemicals Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409 in the **Federal Register** pursuant to 21 CFR 1301.33(a) (73 FR 45784). On May 28,

2008, Chattem Chemicals Inc., had made application by renewal to DEA as a bulk manufacturer of the certain basic classes of controlled substances listed in schedules I and II. The Notice of Application published August 6, 2008, listed the following basic classes of controlled substances for which Chattem Chemicals Inc. sought registration as a bulk manufacturer:

Drug	Schedule
4-Methoxyamphetamine (7411)	I
Difenoxin (9168)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Pentobarbital (2270)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

DEA inadvertently did not include the following substances for which Chattem Chemicals Inc. also seeks registration as a bulk manufacturer:

Drug	Schedule
Lisdexamfetamine Mesylate (1205).	II
Dihydrocodeine (9120)	II
Dihydromorphine (9145)	II
Hydromorphone (9150)	II
Oripavine (9330)	II
Oxymorphone (9652)	II
Reminfentanil (9739)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152.

As DEA inadvertently did not include all basic classes of controlled substances for which Chattem Chemicals Inc. sought registration in the Notice of Application published August 6, 2008, DEA is extending the comment period for this application in accordance with 21 CFR 1301.33(a). Therefore, the comment period for this application is extended from October 6, 2008 to November 14, 2008.

Dated: September 8, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–21461 Filed 9–12–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

[OMB Number 1125–0002]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Notice of Appeal from a Decision of an Immigration Judge.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until November 14, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact John N. Blum, Acting General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia, 22041; *telephone:* (703) 305–0470.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Notice of Appeal from a Decision of an Immigration Judge.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR–26, Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* A party (either the U.S. Immigration and Customs Enforcement of the Department of Homeland Security or the respondent/applicant) who appeals a decision of an Immigration Judge to the Board of Immigration Appeals (Board). Other: None. Abstract: A party affected by a decision of an Immigration Judge may appeal that decision to the Board, provided that the Board has jurisdiction pursuant to 8 CFR 1003.1(b). An appeal from an Immigration Judge's decision is taken by completing the Form EOIR–26 and submitting it to the Board.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 23,417 respondents will complete the form annually with an average of thirty minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 11,708.5 total burden hours associated with this collection annually.

If additional information is required, contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: September 9, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E8–21444 Filed 9–12–08; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

[OMB Number 1125–0001]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Application for Cancellation of Removal (42A) for Certain Permanent Residents; (42B) and Adjustment of Status for Certain Nonpermanent Residents.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until November 14, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact John N. Blum, Acting General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 22041; *telephone:* (703) 305–0470. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Cancellation of Removal (42A) for Certain Permanent Residents; (42B) and Adjustment of Status for Certain Nonpermanent Residents.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* EOIR–42A, EOIR–42B. Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual aliens determined to be removable from the United States. *Other:* None. *Abstract:* This information collection is necessary to determine the statutory eligibility of individual aliens who have been determined to be removable from the United States for cancellation of their removal, as well as to provide information relevant to a favorable exercise of discretion.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 11,000 respondents will complete the form annually with an average of 5 hours, 45 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 69,960 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D. Street, NW., Washington, DC 20530.

Dated: September 9, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E8–21445 Filed 9–12–08; 8:45 am]

BILLING CODE 4410–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[08–062]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Sharon Mar, Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Walter Kit, NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JE0000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Recordkeeping and reporting are required to ensure proper accounting of Federal funds and property provided under grants and cooperative agreements with state and local governments.

II. Method of Collection

Electronic funds transfer is used for payment under Treasury guidance. Submission of almost all information required under grants or cooperative agreements with state and local governments, including property, financial, performance, and financial reports, is submitted electronically.

III. Data

Title: NASA Inventory Report: Property Management & Control, Grants.

OMB Number: 2700–0047.

Type of review: Revision of currently approved collection.

Affected Public: State, Local or Tribal Governments.

Estimated Number of Respondents: 302.

Estimated Total Annual Burden Hours: 1732 hours.

Estimated Total Annual Cost: $0.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Walter Kit,

NASA Clearance Officer.

[FR Doc. E8–21458 Filed 9–12–08; 8:45 am]

BILLING CODE 7510–13–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

The National Endowment for the Humanities; Meetings of Humanities Panel

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* October 2, 2008.
   Time: 9 a.m. to 5 p.m.
   Room: 415.
   Program: This meeting will review applications for Archaeology and Anthropology in Preservation and Access Humanities Collections and Resources, submitted to the Division of Preservation and Access, at the July 31, 2008, deadline.
2. *Date:* October 7, 2008.
   Time: 9 a.m. to 5 p.m.
   Room: 415.
   Program: This meeting will review applications for United States History and Culture I in Preservation and Access Humanities Collections and Resources, submitted to the Division of Preservation and Access, at the July 31, 2008, deadline.
3. *Date:* October 15, 2008.
   Time: 9 a.m. to 5 p.m.
   Room: 415.
   Program: This meeting will review applications for Literature and Philosophy in Preservation and Access Humanities Collections and Resources, submitted to the Division of Preservation and Access, at the July 31, 2008, deadline.
4. *Date:* October 16, 2008.
   Time: 9 a.m. to 5 p.m.
   Room: 421.
   Program: This meeting will review applications for America's Media Makers Grants Program in United States History, submitted to the Division of Public Programs, at the August 27, 2008, deadline.
5. *Date:* October 20, 2008.
   Time: 9 a.m. to 5 p.m.
   Room: 421.
   Program: This meeting will review applications for America's Historical and Cultural Organizations Grants Program and the Interpreting America's Historic Places Grants Program, submitted to the Division of Public Programs, at the August 27, 2008, deadline.
6. *Date:* October 21, 2008.
   Time: 9 a.m. to 5 p.m.
   Room: 421.
   Program: This meeting will review applications for America's Historical and Cultural Organizations Grants Program in Art History and Anthropology, submitted to the Division of Public Programs, at the August 27, 2008 deadline.
7. *Date:* October 21, 2008.
   Time: 9 a.m. to 5 p.m.
   Room: 415.
   Program: This meeting will review applications for United States History and Culture II in Preservation and Access Humanities Collections and Resources, submitted to the Division of Preservation and Access, at the July 31, 2008 deadline.
8. *Date:* October 23, 2008.
   Time: 9 a.m. to 5 p.m.
   Room: 421.
   Program: This meeting, which will be by teleconference, will review applications for America's Media Makers Grants Program in Foreign Cultures, submitted to the Division of Public Programs, at the August 27, 2008 deadline.
9. *Date:* October 27, 2008.
   Time: 9 a.m. to 5 p.m.
   Room: 421.
   Program: This meeting will review applications for America's Historical and Cultural Organizations Grants Program in United States History, submitted to the Division of Public Programs, at the August 27, 2008 deadline.
10. *Date:* October 28, 2008.
    Time: 9 a.m. to 5 p.m.
    Room: 421.
    Program: This meeting will review applications for America's Historical and Cultural Organizations Grants Program in American Studies, submitted to the Division of Public Programs, at the August 27, 2008 deadline.
11. *Date:* October 28, 2008.
    Time: 9 a.m. to 5 p.m.
    Room: 41.5
    Program: This meeting will review applications for American Studies in Preservation and Access Humanities Collections and Resources, submitted to the Division of Preservation and Access, at the July 31, 2008 deadline.
12. *Date:* October 30, 2008.
    Time: 9 a.m. to 5 p.m.
    Room: 415.
    Program: This meeting will review applications for Research and Development in Preservation and Access Humanities Collections and Resources, submitted to the Division of Preservation and Access, at the July 31, 2008 deadline.
13. *Date:* October 30, 2008.
    Time: 9 a.m. to 5 p.m.
    Room: 421.
    Program: This meeting will review applications for America's Historical and Cultural Organizations Grants Program in Art History, submitted to the Division of Public Programs, at the August 27, 2008 deadline.
14. *Date:* October 30, 2008.
    Time: 8:30 a.m. to 5 p.m.
    Room: 315.

Program: This meeting will review applications for School Collaboration Projects in Picturing America, submitted to the Division of Education Programs, at the October 1, 2008 deadline.

15. *Date:* October 31, 2008.

Time: 9 a.m. to 5 p.m.

Room: 421.

Program: This meeting, which will be by teleconference, will review applications for America's Media Makers Grants Program in Radio, submitted to the Division of Public Programs, at the August 27, 2008 deadline.

Michael P. McDonald,

Advisory Committee Management Officer.

[FR Doc. E8–21446 Filed 9–12–08; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

AGENCY HOLDING MEETING: National Science Board.

DATE AND TIME: Monday, September 22, 2008, at 8 a.m.

PLACE: University of Alaska Fairbanks, Elvey Building, Globe Room, Fairbanks, AK 99775.

STATUS: Some portions open, some portions closed.

Open Sessions

September 22, 2008

8 a.m.–8:10 a.m.

8:10 a.m.–11:15 a.m.

11:15 a.m.–12 p.m.

Closed Sessions

September 22, 2008

1:30 p.m.–2:15 p.m.

2:15 p.m.–2:30 p.m.

AGENCY CONTACT: Dr. Robert E. Webber, *rwebber@nsf.gov*, (703) 292–7000, *http://www.nsf.gov/nsb/*.

MATTERS TO BE DISCUSSED:

Monday, September 22, 2008

Open Session: 8 a.m.–8:10 a.m.

Chairman's Introduction and University of Alaska Fairbanks Welcome.

Committee on Programs and Plans (CPP)

Open Session: 8:10 a.m.–11:15 a.m.

- Approval of August 2008 CPP Minutes.
- Committee Chairman's Remarks.
- Task Force on Sustainable Energy (SE).
  - SE Task Force Co-Chairmen's Remarks.
  - Discussion and Summary of September 4, 2008 Roundtable Discussion.
  - Discussion of Possible Recommendations for Inclusion in a Draft Report.
  - Discussion of Upcoming Task Force Activities.
- NSB Information Item: National Nanotechnology Infrastructure Network (NNIN).
- Review of NSF Major Research Facilities and the Major Research Equipment and Facilities Construction (MREFC) Process.
- Major Research Facilities and Facility Plan: Horizon Projects; Maintenance and Operations Planning for Large Facilities; and Policy Issues.
- Review of MREFC Process
- Discussion

Plenary Open

Open Session: 11:15 a.m.–12 p.m.

- Approval of August 2008 Minutes.
- Resolution to Close December 2008 Meeting.
- Chairman's Report.
- Director's Report.
- Open Committee Report.

Committee on Programs and Plans (CPP)

Closed Session: 1:30 p.m.–2:15 p.m.

- Chairman's Remarks.
- NSB Information Item: National Astronomy and Ionosphere Center (NAIC).
- NSB Action Item: Management and Operations of the National Optical Astronomy Observatory and the National Solar Observatory.

Plenary Closed

Closed Session: 2:15 p.m.–2:30 p.m.

- Approval of August 2008 Minutes.
- Awards and Agreements.
- Closed Committee Reports.

Ann Ferrante,

Technical Writer/Editor.

[FR Doc. E8–21400 Filed 9–12–08; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 63–001]

Department of Energy; Notice of Acceptance for Docketing of a License Application for Authority To Construct a Geologic Repository at a Geologic Repository Operations Area at Yucca Mountain, NV

By letter dated June 3, 2008, the Department of Energy (DOE, or the Applicant) submitted a license application (Application) seeking authorization to construct a geologic repository at a geologic repository operations area at Yucca Mountain in Nye County, Nevada. The Application was submitted to the Nuclear Regulatory Commission (NRC), pursuant to Section 114 of the Nuclear Waste Policy Act, as amended (NWPA), Title 10 of the Code of Federal Regulations (10 CFR) Part 63, and 10 CFR 2.101. NRC published a notice of receipt and availability of this application in the **Federal Register** (73 FR 34348, corrected in 73 FR 40883) on June 17, 2008.

The NRC staff has determined that DOE has submitted information in accord with 10 CFR Part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,'' and 10 CFR Part 63, ''Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada,'' that can be accepted for docketing and review. The docket number established for this license application is 63–001.

The NRC staff will perform a detailed technical review of the license application to determine whether to authorize construction of a geologic repository. Docketing of the license application does not preclude the NRC from requesting additional information from the applicant as the review proceeds, nor does it predict whether the Commission will grant or deny a construction authorization. The Commission will conduct a hearing in accord with 10 CFR Part 2, Subpart C, ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' Subpart J, ''Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository,'' and Subpart G, ''Rules for Formal Adjudications.'' If the Commission finds that the license application meets the applicable standards of the Atomic Energy Act of

1954, as amended, the NWPA, and the Commission's regulations, then the Commission will issue a construction authorization, in the form and containing such conditions and limitations, if any, as the Commission finds appropriate and necessary.

The Commission finds that a hearing is required in the public interest, prior to issuance of a construction authorization. A notice of hearing announcing the opportunity to petition for leave to intervene in the hearing will be published in the **Federal Register** at a later date. The notice of hearing will state, pursuant to 10 CFR 2.104(b): (1) The nature of the hearing; (2) the authority under which the hearing is to be held; (3) the matters of fact and law to be considered; (4) the date by which requests for hearing or petitions to intervene must be filed; and (5) the presiding officer designated for the hearing or the procedure that the Commission will use to designate a presiding officer for the hearing.

Pursuant to its obligations under § 114(f)(4) of the NWPA, and 10 CFR 51.26(c), it is the intention of the Commission to adopt the environmental impact statement (EIS) prepared by the Secretary of Energy to the extent practicable.

In accord with 10 CFR 51.109(a), the NRC staff's position is that it is practicable to adopt, with further supplementation, the EIS and supplements prepared by DOE. The staff concludes that neither the 2002 Final Environmental Impact Statement (FEIS) nor the 2008 Final Supplemental Environmental Impact Statement (Repository Supplemental EIS) adequately address all of the impacts on groundwater, or from surface discharges of groundwater, from the proposed action. The staff concludes that additional supplementation is needed to ensure the 2002 FEIS and 2008 Repository Supplemental EIS are adequate. The basis for the staff's position is presented in the ''U.S. Nuclear Regulatory Commission Staff's Adoption Determination Report for the U.S. Department of Energy's Environmental Impact Statements for the Proposed Geologic Repository at Yucca Mountain,'' which is available in the Agencywide Documents Access and Management System (ADAMS), accession number ML082420342. [The ADAMS accession number for the ADAMS package containing DOE's Final Environmental Impact Statement is ML032690321, and the accession number for the ADAMS package containing DOE's Final Supplemental Environmental Impact Statement is ML081750191. The ADAMS accession number for the ADAMS package containing DOE's Final Rail Corridor Supplemental EIS and Rail Alignment EIS is ML082460227.]

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, and will be accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html*. The application is also available at *http://www.nrc.gov/waste/hlw-disposal/yucca-lic-app.html*. Persons who do not have access to ADAMS or who encounter problems in accessing documents located 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 at Rockville, MD, this 8th day of September 2008.

For The Nuclear Regulatory Commission.

Michael F. Weber,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E8–21431 Filed 9–12–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333]

Entergy Nuclear Fitzpatrick, LLC, and Entergy Nuclear Operations, Inc.; The James A. Fitzpatrick Nuclear Power Plant; Notice of Issuance of Renewed Facility Operating License No. DPR–59 for an Additional 20-Year Period Record of Decision

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Renewed Facility Operating License No. DPR–59 to the Entergy Nuclear FitzPatrick, LLC and Entergy Nuclear Operations, Inc. (the licensee), the operator of the James A. FitzPatrick Nuclear Power Plant (JAFNPP). Renewed Facility Operating License No. DPR–59 authorizes operation of JAFNPP, by the licensee at reactor core power levels not in excess of 2536 megawatts thermal (881 megawatts electric), in accordance with the provisions of the JAFNPP renewed license and its Technical Specifications.

This notice also serves as the record of decision for the renewal of Facility Operating License No. DPR–59 for JAFNPP, consistent with Title 10 of the Code of Federal Regulations Section 51.103 (10 CFR 51.103). As discussed in the Final Supplemental Environmental Impact Statement (FSEIS) for JAFNPP, dated January 2008, the Commission considered a range of reasonable alternatives that included generation from coal, natural gas, oil, wind, solar, hydropower, geothermal, wood waste, municipal solid waste, other biomass-derived fuels, delayed retirement, utility-sponsored conservation, a combination of alternatives, and a no-action alternative. The factors considered in the record of decision can be found in the supplemental environmental impact statement (SEIS) for License Renewal, Supplement 31 regarding James A. FitzPatrick Nuclear Power Plant.

JAFNPP is a boiling water reactor located along the shore of Lake Ontario, Oswego County, New York. The site is approximately seven miles north-northeast of the city of Oswego. The application for the renewed licenses complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR Chapter I, the Commission has made appropriate findings, which are set forth in the license.

Prior public notice of the action involving the proposed issuance of the renewed license and of an opportunity for a hearing regarding the proposed issuance of the renewed license was published in the **Federal Register** on September 20, 2006 (71 FR 55032). For further details with respect to this action, see (1) The Entergy Nuclear FitzPatrick, LLC and Entergy Nuclear Operations, Inc., license renewal application for James A. FitzPatrick Nuclear Power Plant dated July 31, 2006, as supplemented by letters dated through November 5, 2007; (2) the Commission's safety evaluation report (NUREG–1905), published in April 2008; (3) the licensee's updated safety analysis report; and (4) the Commission's final environmental impact statement (NUREG–1437, Supplement 31), published in January 2008. These documents are available at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, and can be viewed from the NRC Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*.

Copies of Renewed Facility Operating License No. DPR–59 may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of License Renewal. Copies of the James A. FitzPatrick Nuclear Power Plant, Safety Evaluation Report (NUREG–1905) and

the Final Environmental Impact Statement (NUREG–1437, Supplement 31) may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161–0002 (*http://www.ntis.gov*), 703–605–6000, or the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954 (*http://www.gpoaccess.gov*), 202–512–1800. All orders should clearly identify the NRC publication number and the requester's Government Printing Office deposit account number or a VISA or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 8th day of September 2008.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E8–21430 Filed 9–12–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0497]

NRC Enforcement Policy Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of draft and request for comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its Enforcement Policy (Enforcement Policy or Policy) to more appropriately address the various areas that the NRC regulates, providing a framework that supports consistent implementation of the Enforcement Policy. A notice was published on January 25, 2007, announcing that the NRC was undertaking a major revision of the Enforcement Policy to clarify the use of terms and update the Policy, removing outdated information and adding information addressing enforcement issues in areas that are not currently directly addressed in the Policy. The NRC is now soliciting written comments from interested parties including public interest groups, states, members of the public and the regulated industry, i.e., reactor and materials licensees, vendors, and contractors, on the proposed revised Policy. This request is intended to assist the NRC in revising the Enforcement Policy; NRC does not intend to modify its emphasis on compliance with NRC requirements.

DATES: Submit comments on or before November 14, 2008. This time period allows for the public to respond to this notice as well as the opportunity to provide general comments on the revision of the Policy. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Comments will be made available to the public in their entirety; personal information, such as your name, address, telephone number, e-mail address, etc. will not be removed from your submission. You may submit comments by any one of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov; search on docket ID: NRC–2008–0497.

Mail comments to: Michael T. Lesar, Chief, Rulemaking, Directives, and Editing Branch, Office of Administration, Mail Stop: T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand-deliver comments to: 11555 Rockville Pike, Rockville, MD 20852, between the hours of 7:45 a.m. and 4:15 p.m., Federal workdays.

You can access publicly available documents related to this notice using the following methods:

Federal e-Rulemaking Portal: Documents related to this notice, including public comments, are accessible at *http://www.regulations.gov*, by searching on docket ID: NRC–2008–0497.

NRC's Public Document Room (PDR): The public may examine and have copied for a fee, publicly available documents at the NRC's PDR, Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Document Access and Management System (ADAMS): The draft Enforcement Policy is available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS Accession Number ML082520457. From this site, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. In addition, the draft Enforcement Policy will be available at *http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html*. If you do not have Internet access or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Doug Starkey, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; *Doug.Starkey@nrc.gov*, (301) 415–3456.

SUPPLEMENTARY INFORMATION:

I. Background

The NRC Enforcement Policy contains the enforcement policy and procedures that the U.S. Nuclear Regulatory Commission (NRC) uses to consider potential enforcement actions in response to apparent violations of NRC requirements. The primary purpose of the Enforcement Policy is to support the NRC's overall safety mission, i.e., to ensure adequate protection of public health and safety, promote the common defense and security, and protect the environment. Because it is a policy statement and not a regulation, the Commission may deviate from this statement of policy as appropriate under the circumstances of a particular case.

The Enforcement Policy was first published in the **Federal Register** on October 7, 1980 (46 FR 66754), as an interim policy. The Commission published a final version of the Policy on March 9, 1982 (47 FR 9987). The Enforcement Policy has been modified on a number of occasions to address changing requirements and additional experience and on June 30, 1995 (60 FR 34381), a major revision of the Policy was published. The NRC maintains the Enforcement Policy on its Web site at *http://www.nrc.gov*; select Public Meetings and Involvement, Enforcement, and then Enforcement Policy.

The goal of the Policy is to support the NRC's safety and security mission by emphasizing the importance of compliance with regulatory requirements, and encouraging prompt identification, and prompt, comprehensive correction of violations. Revisions to the Policy have consistently reflected this commitment: for example, in 1998, the NRC changed its inspection procedures to address the Reactor Oversight Process (ROP) initiative. This has been reflected in the Policy's use of risk insights to assess the significance of violations whenever possible. While this may result in fewer Notices of Violation being issued (because of a greater emphasis on the use of non-cited violations), it has not reduced the agency's emphasis on the importance of compliance with NRC requirements. Another example involves the NRC's development of a pilot program in 2005 which focuses on the use of Alternative Dispute Resolution (ADR) for certain kinds of enforcement cases. The NRC enforcement staff has used ADR to resolve reactor, fuel facility, and materials enforcement cases. While the use of ADR in enforcement raises unique issues, it emphasizes creative,

cooperative approaches to handling conflicts in lieu of adversarial procedures.

The NRC is again proceeding with making a major revision to its Enforcement Policy. As discussed above, since it was first published in 1980, sections of the Policy have been updated and additional sections have been included. Terms used under conventional enforcement are now associated with the significance determination process (SDP) performed under the ROP as well; therefore, the use of these terms must be clarified. In addition, there are areas that are not directly addressed in the Supplements of the Enforcement Policy, such as the enforcement issues associated with combined licenses for the proposed new reactors and the construction phase of proposed fuel facilities as well as recently promulgated requirements in the safeguards and security area. These areas must be addressed either by adding them to the text of the existing Policy and Supplements or by revising the Policy and developing new Supplements. Finally, the format of the Enforcement Policy is being reorganized to reflect the changes that have been made to it.

II. Proposed Plan

The NRC envisions revising the Enforcement Policy so that the policy statement follows the actual enforcement process. The NRC's enforcement process has three basic steps: first, violations must be identified; next, the NRC must assess the significance or severity of the violation; and finally, the NRC must disposition the violation. Throughout the process, an organization or individual subject to an NRC enforcement action has multiple opportunities to provide input.

In order for the policy to follow the actual enforcement process some of the material in the current Enforcement Policy has been either removed entirely from the revised Policy or relocated to the NRC Enforcement Manual. The intent is that this revised Policy more closely reflects the Commission's statement of policy and that it not be a guidance document or procedure which discusses every specific implementation aspect of enforcement. Therefore, some of the information in the current policy, which more closely resembles procedural guidance rather than Commission policy, has been either reworded, deleted, or moved to a guidance document, *e.g.*, the NRC Enforcement Manual. One example of such a deletion is found in Section III, Responsibilities, of the current Policy. Specifically, information regarding delegation of authority was removed because delegation of authority is actually addressed in internal NRC memorandums. Another example is found in Section V, Predecisional Enforcement Conferences (PECs), of the current policy. In particular, the implementation guidance in the current policy regarding conduct of PECs is being relocated to the Enforcement Manual. As a final example, most of the discussion regarding how the civil penalty assessment process is implemented will be relocated to the Enforcement Manual.

The revised Enforcement Policy also includes a proposed revision to a previous **Federal Register** notice, ''Base Civil Penalties for Loss, Abandonment, or Improper Transfer or Disposal of Sources; Policy Statement,'' published December 18, 2000 (65 FR 79139).

The Commission is aware that enforcement actions deliver regulatory messages. Based on this tenet, the goals of this revision are to ensure that the Enforcement Policy: (1) Continues to reflect the Commission's focus on safety, *e.g.*, the need for licensees to identify and correct violations, to address root causes, and to be responsive to initial opportunities to identify and prevent violations; (2) appropriately addresses the various subject areas that the NRC regulates; and (3) provides a framework that supports consistent implementation, recognizing that each enforcement action is dependent on the specific circumstances of the case.

The following draft Table of Contents is consistent with the approach described above:

PREFACE
1.0 INTRODUCTION
1.1 Purpose of the Enforcement Policy
1.2 Applicability of the Enforcement Policy
1.3 Statutory Authority
1.4 Regulatory Framework
1.5 Adequate Protection Standard
2.0 NRC ENFORCEMENT PROCESS
2.1 Identification of Violations
2.2 Assessment of Violations
2.2.1 Factors Affecting Assessment of Violations
2.2.2 Severity Levels
2.2.3 Significance Determination Process
2.2.3.1 Exceptions to the Use of the SDP
2.3 Disposition of Violations
2.3.1 Minor Violations
2.3.2 More than Minor Violations
2.3.3 Reopening Closed Enforcement Actions
2.3.4 Enforcement Guidance Memorandum
2.3.5 Commission Notification and Consultation
2.4 Participation in the Enforcement Process
2.4.1 Predecisional Enforcement Conference
2.4.2 Regulatory Conference
2.4.3 Alternative Dispute Resolution
3.0 USE OF ENFORCEMENT DISCRETION
3.1 Violations Identified During Extended Shutdowns or Work Stoppages
3.2 Violations Involving Old Design Issues
3.3 Violations Indentified Due to Previous Enforcement Actions
3.4 Violations Involving Certain Discrimination Issues
3.5 Violations Involving Special Circumstances
3.6 Use of Discretion in Determining the Amount of a Civil Penalty
3.7 Exercise of Discretion to Issue Orders
3.8 Notices of Enforcement Discretion (NOED) for Reactor Licensees
3.9 Enforcement Discretion for Certain Fire Protection Issues (10 CFR 50.48)
4.0 ENFORCEMENT ACTIONS AGAINST INDIVIDUALS
4.1 Circumstances When Enforcement Action Against an Individual May Be Taken
4.2 NOVs and Orders to Individuals
4.2.1 Licensed Individuals
4.2.2 Non-Licensed Individuals
4.3 Civil Penalties to Individuals
4.4 Confirmatory Orders to Individuals
5.0 PUBLIC AVAILABILITY OF INFORMATION REGARDING ENFORCEMENT ACTIONS
6.0 SUPPLEMENTS—VIOLATION EXAMPLES
6.1 Reactor Operations
6.2 Facility Construction
6.3 Information Security
6.4 Health Physics
6.5 Transportation
6.6 Materials Operations
6.7 Inaccurate and Incomplete Information and Reporting
6.8 Emergency Preparedness
6.9 Fuel Cycle Operations
6.10 Licensed Operator
6.11 Reactor and Fuel Facility Security
6.12 Discrimination
6.13 Materials Security
7.0 GLOSSARY OF TERMS
8.0 TABLE OF BASE CIVIL PENALTIES

III. Proposed Revisions to Table of Base Civil Penalties

Yucca Mountain High Level Waste Repository

Congress enacted the Nuclear Waste Policy Act of 1987 (NWPA) for the purpose of establishing a comprehensive national program for the safe, permanent disposal of high level waste (HLW). The NWPA directed the Department of Energy (DOE) to study suitable sites for a deep, underground repository. In 1987, Congress amended the NWPA and directed the DOE to study only one site, Yucca Mountain, as a potential repository.

The Atomic Energy Act of 1954, as amended (AEA), the Energy Reorganization Act of 1974, as amended (ERA), and NWPA, as amended,

authorize the NRC to regulate the siting, development, construction, and operation of the Yucca Mountain repository.

The NRC's authority to regulate the DOE's receipt and possession of source, special nuclear, and byproduct material at Yucca Mountain has been implemented through 10 CFR Part 63, Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca Mountain, Nevada.

The NRC's enforcement authority is set forth in the AEA and the ERA. This statutory authority is implemented through Subpart B of 10 CFR Part 2, which contains the procedures the NRC uses in exercising its enforcement authority, primarily Notices of Violation (NOVs), Civil Penalties, and Orders. Violations are subject to civil enforcement action and may also be subject to criminal prosecution.

Regulatory requirements have varying degrees of safety, security, or environmental significance. For that reason, the NRC imposes various base civil penalties depending on the specific circumstances. The base civil penalties for various reactor, fuel cycle, materials, and vendor programs are set forth in this revised Enforcement Policy, Section 8, Tables A and B.

The NRC uses a graded approach in assessing civil penalties based on the severity level of the violation and the class of licensee, vendor, or other person. Base civil penalties generally take into account the significance of a violation as the primary consideration, while the licensee's ability to pay is a secondary consideration. The NRC reviews each proposed civil penalty on its own merits and, after considering all relevant circumstances, may adjust the base civil penalties in Table A for Severity Level I, II, and III violations as reflected in Table B of the Enforcement Policy, *i.e.*, 100 percent for Severity Level I violations, 80% for Severity Level II violations, and 50 percent for Severity Level III violations. However, in no instance would a civil penalty for any one violation exceed the current statutory limit of $130,000 per day per violation.

The most viable enforcement option available to the NRC, in addition to NOVs and orders, is the imposition of civil penalties. Currently there are no provisions in Table A of the Enforcement Policy that address DOE as a licensee. Therefore, the NRC is revising Table A of the Policy to ensure that, if the need arises, the NRC has the appropriate tools to take enforcement actions as prescribed in Subpart J, Violations, of 10 CFR Part 63, during the application phase. DOE submitted its construction license application for Yucca Mountain for review on June 3, 2008. The NRC acknowledged receipt of the application on June 10, 2008, at which time DOE became an NRC license applicant.

Based on the potential nuclear material inventory involved, *i.e.*, at least 70 million metric tons of HLW, the corresponding safety consequences that could arise at the site, specifically to occupational employees, and the DOE's ability to pay, the staff recommends the statutorily allowed maximum base civil penalty of $130,000 per day for a Severity Level I violation. In determining the base civil penalty that should be applied to the Yucca Mountain repository, the staff also considered the fact that when 10 CFR Part 63 was developed, the licensing criteria used in that part was comparable to the criteria applied to reactors and spent fuel facilities. The staff also recommends that this information be included in Table A under a generic heading, *i.e.*, ''Yucca Mountain High Level Waste Repository,'' to address the possibility of any future engineered underground disposal facilities used for the storage of HLW.

Because the DOE's activities during the construction application would, most likely, lack direct safety consequences to the public health and safety (i.e., waste will not have been transferred to the site during the first phase), it is likely that many of the violations during this phase could be either cited or non-cited Severity Level IV violations. In addition, the staff expects that escalated enforcement actions during the application review would seldom exceed a Severity Level III. While the staff has the option to mitigate or escalate a violation and/or monetary sanctions based on the circumstances surrounding a violation, the staff believes that few, if any, of these violations would escalate to a Severity Level I or II.

Gas Centrifuge Uranium Enrichment Facilities

The current Enforcement Policy does not provide a base civil penalty for enforcement actions at gas centrifuge uranium enrichment facilities. For that reason, if a violation of NRC requirements were to occur with a proposed civil penalty at this type of facility, the staff would assess the civil penalty utilizing the agency's philosophy as articulated in the Enforcement Policy, i.e., the civil penalty would be based on the circumstances of the case, the type of licensee involved, and the ability of the licensee to pay the civil penalty.

Currently, NRC staff is performing licensing reviews of two gas centrifuge uranium enrichment facilities with enrichment levels of 5 weight percent uranium-235 (U_{235}) in one case and 10 weight percent U_{235} in the other. Therefore, it is appropriate to provide enforcement guidance for this type of facility at this time.

In developing a base civil penalty for gas centrifuge uranium enrichment facilities, NRC compared the radiological, chemical, and security hazards with both the Gaseous Diffusion Plants (GDPs) and Category III fuel fabricators and, through an overall comparison, provide an appropriate base civil penalty.

To determine the appropriate base civil penalty for gas centrifuge uranium enrichment facilities, the staff first compared the potential impact of noncompliance on public health and safety and the common defense and security with GDPs because both are enrichment facilities utilizing the same kinds of materials and, in addition, both have security implications associated with their operation. This comparison indicates that the radiological and chemical hazards at gas centrifuge uranium enrichment facilities are substantially less than these hazards at GDPs based on the significantly lower quantities of liquid and gaseous uranium hexafluoride (UF_6) in the process systems and the significantly lower potential for releases of large quantities of UF_6.

Gaseous diffusion cascades operate at pressures that are sub-atmospheric to just above atmospheric pressure. In addition, the current GDP utilizes feed, product withdrawal, and tails withdrawal systems that handle large quantities of pressurized liquid UF_6. This results in the potential for releases of large quantities of UF_6. Since the GDP withdrawal stations involve the handling and lifting of up to 14-ton cylinders of liquid UF_6, there is a significant potential for severe consequences in the event that proper plant procedures are not followed. GDPs have high criticality hazards due to the large size (unsafe geometry) of cascade system piping and components, the large UF_6 inventories processed, and the potential for accumulation of critical masses of UF_6 within these system piping and components. GDPs also handle large amounts of flammable material such as lubricating oil and chemically hazardous material other than UF_6 such as chorine triflouride (ClF_3), fluorine (F_2), and chorine (Cl_2).

The radiological and chemical hazards at gas centrifuge uranium enrichment facilities are, by comparison to the GDPs, substantially reduced. Individual centrifuges and cascades contain much smaller quantities of gaseous UF_6. Although UF_6 is liquefied in the sampling and transfer systems, the cylinders containing liquid UF_6 are not moved. Centrifuge enrichment cascades operate at near-vacuum conditions, minimizing the potential for UF_6 releases. These plant designs substantially reduce the radiological and chemical hazards associated with releases of radioactive and hazardous chemicals in comparison to gaseous diffusion plants. Because of the small quantities of UF_6 in the cascades, a gas centrifuge uranium enrichment facility, limiting its enrichments to less than 20 percent of U_{235} (special nuclear material of low strategic significance, therefore, a Category III fuel fabricator), will also have substantially reduced criticality hazards relative to a GDP.

The staff also considered the security implications associated with the operation of gas centrifuge uranium enrichment facilities as compared to the operation of GDPs and to Category III fuel fabricators. That comparison indicates that the security measures necessary to handle information at a gas centrifuge facility is more similar to the GDPs as both types of facilities handle classified information up to Secret Restricted Data and utilize classified components. Both types of facilities are also required to have comparable materials control and accounting programs and physical security programs, and both types of facilities are expected to have programs for protection against potential terrorist activities.

However, as the following comparison indicates, the overall radiological, criticality, and chemical security implications for gas centrifuge uranium enrichment facilities are more comparable to that of Category III fuel fabricators. First, both gas centrifuge uranium enrichment plants and Category III fuel fabricators have Category III Special Nuclear Material, that is, these facilities are limited to enrichments of less than 20 percent of U_{235} (special nuclear material of low strategic significance). In addition, the radiological and chemical risks of gas centrifuge uranium enrichment facilities are more similar to, and in fact even lower than, Category III fuel fabricators due to the fact that fuel fabricators operate with the greater quantities of licensed material in process components and at higher pressures than gas centrifuge plants. Therefore, the necessary physical protection requirements (based on the category of facility) for a gas centrifuge facility are similar to those required for Category III fuel fabricators.

The comparison of the security implications at gas centrifuge uranium enrichment and Category III fuel fabrication facilities indicates that:

1. Security of classified information and components: The security of classified information and components at gas centrifuge facilities will require higher levels of protection than Category III fuel fabricators because classified information and components are not used at Category III fuel fabricators. However, Category III fuel fabricators have and are required to yprotect Safeguards Information.

2. Prevention of unauthorized production or diversion of special nuclear material: The prevention of unauthorized production or diversion of special nuclear material would require gas centrifuge enrichment facilities to have materials accounting and control programs similar to those at the GDPs or Category I fuel fabrication facilities. Category III fuel fabricators also have materials accounting and control programs, although the implications of unauthorized production and diversion of special nuclear material would be less significant than a gas centrifuge uranium enrichment plant.

3. Protection of special nuclear material: Due to the possession of special nuclear material of low strategic significance at both types of facilities, gas centrifuge enrichment facility physical protection requirements for special nuclear material and protection requirements against terrorists are similar to Category III fuel fabricators.

4. Protection against potential terrorist activities: Due to the possession of special nuclear material of low strategic significance at both types of facilities, gas centrifuge enrichment facility physical protection requirements against terrorists are expected to be similar to Category III fuel fabricators.

In conclusion, the comparison of the radiological, criticality, and chemical risks of gas centrifuge uranium enrichment facilities to GDPs and Category III fuel fabricators indicates that these risks are lower than the same risks at GDPs and are lower than the risks at Category III fuel fabricators. In addition, two of the four security risk areas at gas centrifuge uranium enrichment facilities are more comparable to Category III fuel fabricators. Finally, the physical protection and terrorist security risks are substantially less significant for gas centrifuge uranium enrichment facilities than at GDPs, when examined in the context of the radiological and chemical risks at gas centrifuge uranium enrichment facilities. Therefore, after considering both safety and security at gas centrifuge uranium enrichment facilities in terms of their nuclear material inventories and potential for consequences to the public and workers, the staff has concluded that gas centrifuge uranium enrichment facilities are more similar to Category III fuel fabricators than to GDPs. For that reason the staff believes that the base civil penalty for Severity Level I violations at gas centrifuge uranium enrichment facilities in Table A should be established at $32,500, the amount already established for Category III fuel fabricators.

The Enforcement Policy is also being modified to clarify that the fuel fabricators in ''c'' of Table A refer to Category III fuel fabricators.

Uranium Conversion Facilities

The staff proposes to raise the base penalty for enforcement activities associated with uranium conversion facilities to a base civil penalty of $32,500 from the current base civil penalty of $13,000.

Currently, the only operating conversion plant in the United States is the Honeywell facility located in Metropolis, IL. Honeywell chemically processes the uranium source materials from triuranium octoxide (U_3O_8) to UF_6 prior to shipping the product to enrichment plants. The three main bulk chemicals used at Honeywell are ammonia (NH_3, the source of hydrogen), anhydrous hydrofluoric acid (HF), and flourine (F_2). Each is a highly hazardous chemical. Release of bulk quantities of UF_6, NH_3, HF, or F_2 could have off-site consequences due the hazardous nature of the chemicals. NH_3, HF, and F_2 are regulated under the Occupational Safety and Health Administration (OSHA) Process Safety Management Rule, 19 CFR 1910.119. The NRC only regulates those chemicals when they come in contact with licensed material, evolve from licensed material, as in HF from the UF_6/water reaction, or adversely impact the safe handling of licensed material.

Uranium conversion facilities such as Honeywell are licensed under the requirements of 10 CFR Part 40, Domestic Licensing of Source Material. Uranium source material is shipped from uranium mills as ''yellow cake'' in plastic-lined drums. In addition to U_3O_8, yellowcake contains contaminants, including radioactive decay daughter products and various rare earth and other metals. The

yellowcake contains natural uranium, which has only 0.711 percent (U_{235}). Hence, a criticality accident is not possible at a conversion facility. The greatest radiation exposure rates come from processes that concentrate the radioactive decay daughter products in waste streams. Soluble forms of uranium present the greatest health risk from source material at conversion facilities. The health risk is due to the toxic nature of uranium, which is similar to other heavy metals. The radioactive risk is small.

Specifically, the chemical and radiological hazards associated with uranium conversion facilities are as follows:

Chemical Hazards—Uranium is handled in many different chemical forms in UF_6 conversion plants, but UF_6 is the only chemical form of uranium that can be readily dispersed off-site. UF_6 will react with water to form HF and uranium difluorodioxo (UO_2F_2). Because airborne moisture is generally available, the reaction can be expected to occur if UF_6 is released to the atmosphere. Both the HF and the UO_2F_2 produced at a uranium conversion plant are hazardous chemicals. HF is a corrosive acid vapor that can severely harm the lungs and exposed portions of the body. UO_2F_2, formed as particulate material, produces radioactive and chemical effects when taken into the body, and its chemical effect is the most important because much of the uranium is present in soluble form. UF_6 in the liquid form is the most hazardous.

The Honeywell facility produces UF_6 by fluorination of UF4. The UF_6, which is produced in a gaseous state, is collected in cold traps, where it is solidified by refrigerant cooling. Subsequent heating of the cold traps liquefies the UF_6 for transfer to cylinders, where the UF_6 cools to ambient temperature and again solidifies. The cold traps and the cylinders represent the largest accumulation of heated UF_6 and therefore pose the greatest risk of a significant release of UF_6. The filled cylinders represent the greater risk because of their temporary use in the process, the large numbers of individual cylinders utilized, their typically larger inventories of UF_6, and their routine movement within the facilities before solidification. While the filled cylinders are considered to be the greater risk, these risks are also applicable to filled cold traps.

Radiological Hazards—Chemical conversion processes tend to concentrate uranium decay products in the waste streams. Alpha particles resulting from the primary disintegration of uranium present no external radiation problem because they do not penetrate the skin. However, the uranium decay products include isotopes that emit mildly penetrating beta rays and highly penetrating gamma rays. Beta radiation levels as high as 200 mrad/hr may be found at the surface of UF_6. When UF_6 is vaporized from a cylinder, the decay products usually remain behind. Thus, the internal surface of an empty cylinder may have beta radiation levels up to several rad/hr. Similarly, the gamma radiation from an empty cylinder will be much higher than from a filled cylinder and may range up to 200 mrad/hr.

The chemical characteristics of these contaminants will cause significant exposure levels of beta and gamma radiation from the uranium decay product activity in certain sections of the process. The risk of radiation exposure increases during maintenance of process equipment, transfer of product, and handling of UF_6 cylinders.

In raising the base civil penalty for uranium conversion facilities, the staff has analyzed the associated radiological, chemical, and security hazards with that of Gaseous Diffusion Plants (GDPs), Category III fuel fabricators, and test reactors and industrial radiographers. Currently, uranium conversion facilities are in the same base civil penalty category as test reactors and industrial radiographers with the base penalty amount of $13,000.

To determine the appropriate base civil penalty for uranium conversion facilities, the staff first compared the potential impact of noncompliance on public health and safety and the common defense and security with Gaseous Diffusion Plants (GDPs). Gaseous diffusion cascades operate at pressures that are sub-atmospheric to just above atmospheric pressure. In addition, the current GDP utilizes feed, product withdrawal, and tails withdrawal systems that handle large quantities of pressurized liquid UF_6. This results in the potential for releases of large quantities of UF_6. Since the GDP withdrawal stations involve the handling and lifting of up to 14-ton cylinders of liquid UF_6, there is a significant potential for severe consequences in the event that proper plant procedures are not followed. GDPs have high criticality hazards due to the large size (unsafe geometry) of cascade system piping and components, the large UF_6 inventories processed, and the potential for accumulation of critical masses of UF_6 within these system piping and components. GDPs also handle large amounts of flammable material such as lubricating oil and chemically hazardous material other than UF_6 such as ClF_3, F_2, and Cl_2.

The radiological and chemical hazards at uranium conversion facilities are similar in comparison to the GDPs. At a uranium conversion facility such as Honeywell, all UF_6 filled cylinders when initially filled must be allowed to cool for 5 days to ensure that all UF_6 has solidified. The UF_6 solidifies and volume drops from about 95 percent to about 60 percent full. Only ''solid'' cylinders are allowed to be shipped off-site. UF_6 is in solid form under ambient temperature and pressure conditions. Any cylinder breach with UF_6 in the solid form will have a limited release. Uranium conversion facilities are designed to process natural uranium, thus, there is no criticality concerns like there are at GDPs. However, the only major risk factor that a conversion facility does not have that is present at a GDP is the criticality risk.

The staff also considered the security implications associated with the operation of uranium conversion facilities as compared to the operation of GDPs and to Category III fuel fabricators. That comparison indicates that the security measures necessary at a uranium conversion facility are similar to that of a Category III fuel fabricators and GDPs. However, because of the large number of potential chemical hazards and certain radiological hazards, protection against potential terrorist activities is required to protect worker and public health and safety.

In comparison, the overall radiological and chemical hazards implications for uranium conversion facilities are much more significant than those of test reactors and industrial radiographer, but just somewhat less than that of GDPs. As delineated in the NRC Enforcement Policy, operations involving greater nuclear material inventories and greater potential consequences to the public and licensee employees receive higher civil penalties. For the reasons stated above the staff believes that the base civil penalty for violations at uranium conversion facilities in Table A should be established at $32,500, the same amount established for Category III fuel fabricators.

IV. Deletion of Interim Enforcement Policies

The following interim enforcement policies located in the current Enforcement Policy have either been deleted from the revised Policy, for the reasons stated below, or relocated into the revised Enforcement Policy.

Interim Enforcement Policy for Generally Licensed Devices Containing Byproduct Material (10 CFR 31.5)

This interim policy addressed violations that persons licensed pursuant to 10 CFR 31.5 discovered and reported before, as well as during, the initial cycle of a notice and response program related to the revision of 10 CFR 31.5. This interim policy was expected to remain in effect through completion of one cycle of the licensee notice and response program. Since one cycle is complete, this interim policy is no longer in effect.

Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fitness-for-Duty Issues (10 CFR Part 26)

10 CFR Part 26, Fitness for Duty Programs, has been amended. The final rule became effective on April 30, 2008 (73 FR 16966). The amended rule addressed the issues covered by the interim enforcement discretion policy. Therefore, this interim policy has been deleted from the revised Enforcement Policy.

Interim Enforcement Policy Regarding the Use of Alternative Dispute Resolution

This interim policy addressed the use of a pilot program for testing the use of Alternative Dispute Resolution (ADR) in the enforcement program. On May 5, 2006, in SECY–06–0102, ''Evaluation of the Pilot Program on the Use of Alternative Dispute Resolution in the Allegation and Enforcement Program'', the staff provided the Commission with the results of the evaluation of the ADR pilot program. The Office of Enforcement concluded that the program was successful and the staff intends to continue using the ADR program for discrimination and other wrongdoing cases. The ADR program has been incorporated into the revised Enforcement Policy.

Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues (10 CFR 50.48)

This interim policy was moved in its entirety into section 3.9 of the revised Enforcement Policy.

V. Procedural Requirements

Paperwork Reduction Act

This policy statement does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150–0136.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a ''major'' rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Dated at Rockville, MD, this 9th day of September 2008.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Director, Office of Enforcement.

[FR Doc. E8–21433 Filed 9–12–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA–08–014]

In the Matter of Joseph S. Shepherd; Order Prohibiting Involvement in 10 CFR Part 71 Activities and Conditioning Other NRC Licensed Activities (Effective Immediately)

I

Joseph S. Shepherd was a contractor to Source Production and Equipment Company, Inc. (SPEC), of St. Rose, Louisiana. SPEC was a registered user of a U.S. Nuclear Regulatory Commission (NRC or Commission) Model No. 5979 Shipping Package (Certificate of Compliance (CoC) No. 5979, Revision 10), and an NRC-approved Quality Assurance (QA) Program Approval holder (NRC Docket Number 71–0102) pursuant to Part 71 of Title 10 of the Code of Federal Regulations (10 CFR). The CoC authorized use of the Model No. 5979 package under the general license provisions of 10 CFR 71.12 [currently 10 CFR 71.17]. The QA Program Approval satisfied the requirements of 10 CFR 71.12(b) [currently 10 CFR 71.17(b)], and 10 CFR 71.101(c) [currently 10 CFR 71.101(c)(1)] by authorizing activities to be conducted under criteria of Subpart H of 10 CFR Part 71, ''Quality Assurance.'' SPEC also was an NRC export licensee pursuant to 10 CFR Part 110. SPEC hired Mr. Shepherd to perform certain maintenance inspections required by the NRC CoC for the Model No. 5979 shipping cask prior to making shipments of NRC licensed radioactive material to Mexico.

II

During an NRC inspection conducted on November 18, 2004, at Alpha-Omega Services, Inc. (AOS), an NRC certificate holder and Quality Assurance (QA) program holder, certain nonconformances regarding a shipping package, serial number 1B, CoC No. 5979, Model No. 5979, were brought to the NRC's attention. The end-caps of the shipping package did not conform to the physical (weight and materials) and dimensional (end cap thickness and length of the bolts) configuration specified by the CoC. In addition, holes had been drilled in the turret of the shipping package. Foss Therapy Services (FTS) had purchased the shipping package from AOS in 2001. FTS holds a State of California radioactive materials license and coordinates source exchanges and recycling for radiation therapy systems at various hospitals. FTS, however, is not an NRC licensee, authorized user, or certificate or QA program holder. AOS happened to be performing its annual inspection of the Model No. 5979 package when NRC conducted its November 18, 2004, inspection at AOS.

The NRC also became aware during its November 18, 2004, inspection at AOS that FTS had been using SPEC, to ship byproduct material for FTS to Mexico. The NRC obtained shipping documents which confirmed that SPEC had used the nonconforming container between June 25, 2001, and May 20, 2004, to make export shipments to Mexico. SPEC hired Mr. Shepherd, an officer and co-owner of FTS, to perform inspections of the Model No. 5979 shipping package prior to three export shipments by SPEC on July 15, 2003, December 4, 2003, and May 20, 2004.

As a result of the NRC's November 18, 2004, inspection, the NRC's Office of Investigations (OI) initiated an investigation to determine whether SPEC had willfully violated NRC regulations relating to its export shipments to Mexico.

Based on the OI investigation, the NRC has concluded that Mr. Shepherd engaged in three examples of deliberate misconduct in violation of 10 CFR 110.7b, ''Deliberate Misconduct.''

First, on or about July 15, 2003, and December 4, 2003, and in violation of 10 CFR 110.7b(a)(2), Mr. Shepherd deliberately provided materially inaccurate information to SPEC in two checklists and in shipping papers concerning inspections of the Model No.

5979 shipping package. Specifically, Mr. Shepherd signed ''OK'' on all applicable steps of the FTS inspection checklists, and certified on the bills of lading that the package conformed to all national governmental regulations, signifying that Mr. Shepherd had performed all steps of the inspection and that the package conformed to the NRC CoC requirements. In fact, Mr. Shepherd did not perform step 2.4.A, which required that he remove and visually check six cask screws. The inaccurate information was material because it concealed that SPEC failed to conform to the CoC requirement that before shipment of the package, an inspection must be performed, including step 2.4.A.

By deliberately providing materially inaccurate checklists and bills of lading to SPEC on or about July 15, 2003 and December 4, 2003, Mr. Shepherd violated 10 CFR 110.7b(a)(1) because he deliberately caused SPEC to violate 10 CFR 71.3, ''Requirement for License.''10 CFR 71.3 requires that all persons who deliver for transport, or who transport, NRC licensed material must have an NRC license to do so. 10 CFR 71.17, ''General license; NRC-approved package'', provides that a general license to deliver or transport licensed material in a package with an NRC CoC is granted only to licensees who comply with the terms and conditions of the CoC. SPEC relied upon Mr. Shepherd's representations that he had completed all steps of the package inspection required by the CoC. As a result of Mr. Shepherd's deliberate provision of materially inaccurate information, SPEC did not comply with the COC, and thus SPEC delivered for transport and transported licensed material without the license required by 10 CFR 71.3.

Second, on or about May 20, 2004, and in violation of 10 CFR 110.7b(a)(2), Mr. Shepherd deliberately provided materially inaccurate information to SPEC in a checklist and in a bill of lading concerning an inspection of the Model No. 5979 package. Specifically, Mr. Shepherd signed ''OK'' on all applicable steps of the FTS inspection checklist and certified on the bill of lading that the package met all national governmental regulations, signifying that Mr. Shepherd had performed all steps of the inspection and that the package met all CoC requirements. In fact, Mr. Shepherd was not present and did not conduct any inspection of the CoC No. 5979 package. The inaccuracies were material because they concealed that Mr. Shepherd's associate who did the inspection was not authorized or qualified to perform the inspection on SPEC's behalf, and concealed that steps 2.4 through 2.8, required by the maintenance inspection procedures, were not performed.

By deliberately providing a materially inaccurate checklist and bill of lading to SPEC on or about May 20, 2004, Mr. Shepherd violated 10 CFR 110.7b(a)(1) because he deliberately caused SPEC to violate 10 CFR 71.3, ''Requirement for License.'' 10 CFR 71.3 requires that all persons who deliver for transport, or who transport, NRC licensed material must have an NRC license to do so. 10 CFR 71.17, ''General license; NRC-approved package'', provides that a general license to deliver or transport licensed material in a package with an NRC CoC is granted only to licensees who comply with the terms and conditions of the CoC. SPEC relied upon Mr. Shepherd's representations that he had completed all steps of the package inspection required by the CoC. As a result of Mr. Shepherd's deliberate provision of materially inaccurate information, SPEC did not comply with the CoC, and thus SPEC delivered for transport and transported licensed material without the license required by 10 CFR 71.3.

Third, Mr. Shepherd violated 10 CFR 110.7b(a)(2) by deliberately providing materially inaccurate information to SPEC in a conversation around May 2004, in a fax dated January 12, 2005, and again in an e-mail of April 12, 2005, when Mr. Shepherd told SPEC that he had not authorized any modifications to the Model No. 5979 package. Mr. Shepherd told SPEC personnel that the only modifications to the package were holes drilled in the turret by someone else in Mexico. In June 2005, shortly after an OI interview in which Mr. Shepherd admitted to having authorized modifications to the package, Mr. Shepherd told SPEC that he did in fact authorize modifying the end caps by drilling larger holes. The inaccurate information was material because it concealed that the shipping package was rendered nonconforming by the modification Mr. Shepherd had authorized, and concealed that SPEC had delivered for transport or transported licensed material in a certified container without the license required by10 CFR 71.3.

III

Joseph S. Shepherd entered into a plea agreement with the United States Department of Justice on August 22, 2008. Under the terms of that plea agreement, Mr. Shepherd agreed not to contest an NRC order that requires him to comply with the following, or substantially similar, provisions related to his involvement in NRC activities:

1. Not package any Type B shipments, nor prepare any paperwork, for a Type B shipment in any NRC jurisdiction.

2. Prepare and submit the following information to the NRC by the end of September 2008: A list of lessons learned and measures taken to avoid recurrence and a statement describing the reasons that the NRC should have confidence that Mr. Shepherd will perform licensed activities in compliance with NRC regulations.

3. Prior to his conducting licensed activities in NRC jurisdiction, Mr. Shepherd will notify the NRC in writing no later than 5 business days of the planned work in order to facilitate inspections of his activities.

4. For a period of five years from the date of an Order, prior to his conducting licensed activities in NRC jurisdictions, Mr. Shepherd will notify customers that the NRC has issued an Order to him and will also make that Order available to customers.

5. Prepare a presentation and offer to give that presentation at an industry conference to include, at a minimum, a description of the violations, as well as the circumstances that led to the violations, lessons learned, and the corrective actions taken and planned to prevent recurrence. The presentation will also address the following: (1) Acknowledgment that a condition occurred that resulted in violations of NRC requirements; (2) the need to establish an environment and culture that promotes regulatory compliance through the implementation of controls and processes; (3) the need to ensure that all employees are trained and oriented in NRC requirements; and (4) the importance of continued self-assessment of programs and processes to ensure that these programs and processes are delivering the desired outcomes. Mr. Shepherd agrees to advise the NRC of his compliance with this provision no later than one year from the date of an Order.

6. Take a Radiation Safety Officer course with emphasis on the regulatory interface within one year of the date of an Order in order to enhance his understanding of the importance of completeness and accuracy of information regarding activities subject to NRC and DOT regulation. Mr. Shepherd agrees to advise the NRC of his compliance with this provision no later than one year from the date of an Order.

7. If Mr. Shepherd should seek other employment involving NRC-regulated activities within five years from the date of an Order, Mr. Shepherd will provide that employer with a copy of any Order addressing the violations.

IV

Based on the above, it appears that Joseph S. Shepherd has engaged in deliberate misconduct in violation of 10 CFR 110.7b, ''Deliberate misconduct.'' The NRC must be able to rely on its licensees and their employees and contractors to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Shepherd's actions in causing SPEC, an NRC Licensee, to violate 10 CFR 71.3, and his misrepresentations to SPEC, have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and whether the public health and safety can be assured if he is involved in NRC-licensed activities.

While the NRC is not aware of actual safety consequences associated with the shipments, the potential safety consequences were significant, considering the potential adverse impact of shipping radioactive materials in an unapproved package design that had not been demonstrated to meet the transportation package approval standards for both normal and hypothetical accident conditions as required by 10 CFR part 71. Of the many controls that are in place to assure public health and safety during the transport of radioactive materials, one of the most important is that the configuration of the package conforms to that analyzed and approved by the NRC staff, through the package CoC process, so as to assure integrity of the package during transportation for both normal and hypothetical accident conditions. In this case, the package integrity is of particular safety concern given the quantities of licensed radioactive material that were transported on July 15, 2003, December 4, 2003, and May 20, 2004.

Consequently, I lack the requisite reasonable assurance that Mr. Shepherd can be relied upon to comply with NRC requirements with honesty and integrity. Therefore, the public health, safety, and interest require that Mr. Shepherd be prohibited from any involvement in 10 CFR part 71 activities, including the package certificate and quality assurance program requirements of 10 CFR part 71, and that Mr. Shepherd's involvement in other NRC licensed activities be conditioned. Furthermore, pursuant to 10 CFR 2.202, ''Orders,'' I find that the significance of Mr. Shepherd's conduct described above is such that the public health, safety, and interest require that this Order be immediately effective.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 71, 10 CFR 110.7b, and 10 CFR 150.20, *it is hereby ordered, effective immediately, that:*

1. Mr. Shepherd is prohibited from packaging any Type B shipments and from preparing any paperwork for a Type B shipment in any NRC jurisdiction.

2. Mr. Shepherd shall prepare a list of lessons learned and identify measures taken to avoid recurrence of his violations. Mr. Shepherd shall also include a statement describing the reasons that the NRC should have confidence that Mr. Shepherd will perform licensed activities in compliance with NRC regulations. This information shall be submitted to the NRC by the end of September 2008.

3. Prior to his conducting licensed activities in any NRC jurisdiction, Mr. Shepherd shall notify the NRC in writing no less than 5 business days in advance of the planned work in order to facilitate inspections of his activities. The notifications shall be made for a period of five years from the date of this Order.

4. Prior to his conducting licensed activities in any NRC jurisdiction, Mr. Shepherd shall notify customers that the NRC has issued this Order to him and shall also make this Order available to customers. The notifications shall be made for a period of five years from the date of this Order.

5. Mr. Shepherd shall prepare a presentation and offer to give that presentation at an industry conference. The presentation must include, at a minimum, a description of the violations, as well as the circumstances that led to the violations, lessons learned, and the corrective actions taken and planned to prevent recurrence. The presentation must also address the following: (1) Acknowledgment that a condition occurred that resulted in violations of NRC requirements; (2) the need to establish an environment and culture that promotes regulatory compliance through the implementation of controls and processes; (3) the need to ensure that all employees are trained and oriented in NRC requirements; and (4) the importance of continued self-assessment of programs and processes to ensure that these programs and processes are delivering the desired outcomes. Mr. Shepherd must advise the NRC upon completion of these items, which shall be no later than one year from the date of this Order.

6. Mr. Shepherd shall take a Radiation Safety Officer course with emphasis on the regulatory interface within one year of the date of the Order in order to enhance his understanding of the importance of completeness and accuracy of information regarding activities subject to NRC and DOT regulation. Mr. Shepherd must advise the NRC upon completion of this item, which shall be no later than one year from the date of the Order.

7. Should Mr. Shepherd leave Foss Therapy Services and seek other employment involving NRC-regulated activities within five years from the date of this Order, Mr. Shepherd shall provide that employer a copy of this Order.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Joseph S. Shepherd of good cause.

VI

In accordance with 10 CFR 2.202, Joseph S. Shepherd must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its issuance. In addition, Joseph S. Shepherd, and any other persons adversely affected by this Order may request a hearing on this Order within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

The answer shall be in writing and under oath or affirmation, and shall specifically admit or deny each allegation or charge made in this Order. The answer shall set forth the matters of fact and law on which Joseph S. Shepherd or other persons adversely affected relies and the reasons as to why this Order should not have been issued. The answer may consent to the Order. Any answer shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555–0001. Copies shall also be sent to: the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; the Assistant General Counsel for Materials Litigation and Enforcement at the same address; and to Joseph S. Shepherd if the answer is by a person other than Joseph S. Shepherd.

If a person other than Joseph S. Shepherd requests a hearing, that person shall set forth with particularity

the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If Joseph S. Shepherd or a person whose interest is adversely affected requests a hearing, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Joseph S. Shepherd, or any other person adversely affected by this Order may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. The motion must state with particularity the reasons why the Order is not based on adequate evidence and must be accompanied by affidavits or other evidence relied on.

A request for a hearing or to set aside the immediate effectiveness of this order must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The NRC E-filing Final Rule was issued on August, 28 2007, (72 FR 49,139) and codified in pertinent part at 10 CFR Part 2, 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 five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, this Order shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or request for hearing shall not stay the immediate effectiveness of this order.

Dated this 8th day of September 2008.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Director, Office of Enforcement.

[FR Doc. E8–21432 Filed 9–12–08; 8:45 am]

BILLING CODE 7590–01–P

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Proposed Amendments to Columbia River Basin Fish and Wildlife Program

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power and Conservation Council, Council).

ACTION: Proposed amendments to the Council's *Columbia River Basin Fish and Wildlife Program*.

SUMMARY: Pursuant to the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (16 U.S.C. 839

et seq.), the Council invites comments through October 30, 2008, on proposed amendments to its *Columbia River Basin Fish and Wildlife Program* (program), Council document 2008–11. The proposed amendments may be found on the Council's Web site at *http://www.nwcouncil.org/fw/program/2008amend.*

Background: In November 2007, the Council formally requested recommendations for amendments to the program under section 4(h) of the Northwest Power Act. The Council received 65 sets of recommendations by the deadline of April 4, 2008, from fish and wildlife agencies, Indian tribes, and others. The recommendations and supporting information have been collected in Council document 2008–06. The Council provided notice of the amendment recommendations to interested parties and the public and asked for comments. The comments on the recommendations are collected in Council document 2008–09. The Council then based its program amendments on the amendment recommendations submitted to the Council by the deadline, data and information submitted in support of the recommendations, the comments received on the recommendations, and consultations with fish and wildlife agencies, Indian tribes, Bonneville customers, and others. The recommendations, supporting information, comments on the recommendations, and the Council's proposed program amendments (in Council document 2008–11) are all found on the Council's Web site at *http://www.nwcouncil.org/fw/program/2008amend*.

The Council will accept written public comment on the proposed program amendments through October 30, 2008 and will hold public hearings to take written and oral comments in Idaho, Montana, Oregon, and Washington from mid-September through mid-October. For more information on the day, time and locations for the public hearings, please see the Council's Web site at *http://www.nwcouncil.org/fw/program/2008amend/hearings.htm* or call the Council's Central Offices at (503) 222–5161 or (800) 452–5161. The Council may schedule additional public hearings or consultations if necessary.

The Council expects to make final decisions on the proposed amendments at the Council's meeting in Portland, Oregon, on December 9–11, 2008. At the end of this process, the Council will make findings required by the Northwest Power Act regarding any recommendations the Council rejects. The Council may adopt or reject any of these proposed amendments after it has received and reviewed public comments.

Request for Comments: You are invited to comment on the proposed program amendments by 5 p.m. on October 30, 2008. To learn how to comment, please visit the Council's Web site at *http://www.nwcouncil.org/fw/program/2008amend*. You may also submit comments by mail to Mark Walker, Director of Public Affairs at 851 SW. 6th Avenue, Suite 1100, Portland, Oregon 97204.

FOR FURTHER INFORMATION: For a full copy of the proposed program amendments, the amendment recommendations and comments, or for further information, please visit the Council's Web site at *http://www.nwcouncil.org/fw/program/2008amend* or contact the Council at (503) 222–5161 or toll free (800) 452–5161.

Stephen L. Crow,

Executive Director.

[FR Doc. E8–21508 Filed 9–12–08; 8:45 am]

BILLING CODE 7905–01–P

PRESIDIO TRUST

Notice To Extend Comment Period and Notice of Public Meeting

AGENCY: The Presidio Trust.

ACTION: Notice to extend comment period and notice of public meeting.

SUMMARY: By **Federal Register** notice of August 1, 2008 (73 FR 45092), the Presidio Trust (Trust) extended the Environmental Protection Agency calculated 45-day time period for public review of the Draft Supplemental Environmental Impact Statement (SEIS) to September 19, 2008. The previous deadline for comments was July 31, 2008. By this notice, the Trust is (i) further extending the public comment period to October 20, 2008, and (ii) in accordance with § 103(c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb note, Title I of Public Law 104–333, 110 Stat. 4097, as amended, and in accordance with the Trust's bylaws, informing the public of a public meeting of the Trust Board of Directors.

SUPPLEMENTARY INFORMATION: In accordance with the National Environmental Policy Act, the Trust is requesting public comment on the Presidio Trust Management Plan (PTMP) Main Post Update Draft SEIS. The Draft SEIS evaluates alternatives to the planning concept for the 120-acre Main Post district at the Presidio of San Francisco identified in the 2002 PTMP, the Trust's comprehensive land use plan and policy framework. The Draft SEIS considers planning proposals that were not anticipated in the PTMP, including a contemporary art museum and a lodge, and identifies Alternative 2 as the proposed action, which is further described in the Draft Main Post Update of the PTMP. By extending the comment period, the Trust anticipates more in-depth comments on the Draft SEIS that will promote a better-informed decision. The Draft PTMP Main Post Update and Draft SEIS can be reviewed at local libraries, at the Trust headquarters at 34 Graham Street, San Francisco, CA 94129, and on the Trust Web site at *http://www.Presidio.gov* in the Major Projects section. Although the time for comments has been extended, the Trust requests that interested parties provide comments as soon as possible.

The purposes of the public meeting are to provide an Executive Director's report, to receive public comment at a second public meeting of the Trust's Board of Directors on the Draft PTMP Main Post Update and Draft SEIS, and to receive public comment on other matters in accordance with the Trust's Public Outreach Policy. The meeting will be held on Tuesday, October 14, 2008, at 6:30 p.m., at the Palace of Fine Arts Theatre, 3301 Lyon Street, San Francisco, CA 94123.

Individuals requiring special accommodation at the public meeting, such as needing a sign language interpreter, should contact Mollie Matull at 415.561.5300 prior to October 7, 2008.

DATES: The public meeting will begin at 6:30 p.m. on Tuesday, October 14, 2008. Written comments must be received by October 20, 2008.

ADDRESSES: The meeting will be held at the Palace of Fine Arts Theatre, 3301 Lyon Street, San Francisco, CA 94123. Written comments should be submitted to Main Post, Attn: Compliance Coordinator, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Electronic comments can be sent to *Mainpost@Presidiotrust.gov*. Please be aware that all comments and information submitted will be made available to the public, including, without limitation, any postal address, e-mail address, phone number or other information contained in each submission.

FOR FURTHER INFORMATION CONTACT: John Pelka, 415.561.4183.

Dated: September 9, 2008.

Karen A. Cook,

General Counsel.

[FR Doc. E8–21399 Filed 9–12–08; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request: Copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 22d–1, Sec File No. 270–275, OMB Control No. 3235–0310.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 22d–1 under the Investment Company Act of 1940 (the ''Act'') (17 CFR 270.22d–1) provides registered investment companies that issue redeemable securities (''funds'') an exemption from section 22(d) of the Investment Company Act (15 U.S.C. 80a–22(d)) to the extent necessary to permit scheduled variations in or elimination of the sales load on fund securities for particular classes of investors or transactions, provided certain conditions are met. The rule imposes an annual burden per series of a fund of approximately 15 minutes, so that the total annual burden for the approximately 4,735 series of funds that might rely on the rule is estimated to be 1,184 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are requested on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden(s) of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Lewis W. Walker, Acting Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: September 8, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21405 Filed 9–12–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 17Ab2–1, Form CA–1, SEC File No. 270–203, OMB Control No. 3235–0195.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for approval of extension of the following previously approved collection of information as discussed below.

- Rule 17Ab2–1 and Form CA–1: Registration of Clearing Agencies (17 CFR 240.17Ab2–1)

Rule 17Ab2–1 and Form CA–1 require clearing agencies to register with the Commission and to meet certain requirements with regard to, among other things, a clearing agency's organization, capacities, and rules. The information is collected from the clearing agency upon the initial application for registration on Form CA–1. Thereafter, information is collected by amendment to the initial Form CA–1 when material changes in circumstances necessitate modification of the information previously provided to the Commission.

The Commission uses the information disclosed on Form CA–1 to (i) Determine whether an applicant meets the standards for registration set forth in Section 17A of the Securities Exchange Act of 1934 (''Exchange Act''), (ii) enforce compliance with the Exchange Act's registration requirement, and (iii) provide information about specific registered clearing agencies for compliance and investigatory purposes. Without Rule 17Ab2–1, the Commission could not perform these duties as statutorily required.

There are currently approximately six operational clearing agencies and five clearing agencies that have been granted an exemption from registration. The Commission staff estimates that each initial Form CA–1 requires approximately 130 hours to complete and submit for approval. Hours required for amendments to Form CA–1 that must be submitted to the Commission in connection with material changes to the initial CA–1 can vary, depending upon the nature and extent of the amendment. Since the Commission only receives an average of one submission per year, the aggregate annual burden associated with compliance with Rule 17Ab2–1 and Form CA–1 is 130 hours. Based upon the staff's experience, the average cost to clearing agencies of preparing and filing the initial Form CA–1 is estimated to be $18,000. There is no recordkeeping requirement for Rule 17Ab2–1 or Form CA–1. The rule and form do not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Kimberly_P._Nelson@omb.eop.gov*; and (ii) Lewis W. Walker, Acting Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or by sending an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 8, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21406 Filed 9–12–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 17Ad–3(b), SEC File No. 270–424, OMB Control No. 3235–0473.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for approval of extension of the following previously approved collection of information as discussed below.

• Rule 17Ad–3(b) (17 CFR 240.17Ad–3(b)).

Rule 17Ad–3(b) requires registered transfer agents that for each of two consecutive months have failed to turnaround at least 75% of all routine items in accordance with the requirements of Rule 17Ad–2(a) or to process at least 75% of all routine items in accordance with the requirements of Rule 17Ad–2(a) to send to the chief executive officer of each issuer for which such registered transfer agent acts a copy of the written notice required under Rule 17Ad–2(c), (d), and (h). The issuer may use the information contained in the notices in several ways: (1) to provide an early warning to the issuer of the transfer agent's non-compliance with the Commission's minimum performance standards regarding registered transfer agents, and (2) to assure that issuers are aware of certain problems and poor performances with respect to the transfer agents that are servicing the issuer's securities. If the issuer does not receive notice of a registered transfer agent's failure to comply with the Commission's minimum performance standards then the issuer will be unable to take remedial action to correct the problem or to find another registered transfer agent. Pursuant to Rule 17Ad–3(b), a transfer agent that has already filed a Notice of Non-Compliance with the Commission pursuant to Rule 17Ad–2 will only be required to send a copy of that notice to issuers for which it acts when that transfer agent fails to turnaround 75% of all routine items or to process 75% of all items.

The Commission estimates that only two transfer agents will meet the requirements of Rule 17Ad–3(b). If a transfer agent fails to meet the minimum requirements under 17Ad–3(b), such transfer agent is simply sending a copy of a form that had already been produced for the Commission. The Commission estimates a requirement will take each respondent approximately one hour to complete, for a total annual estimate burden of two hours at cost of approximately $60.00 for each hour. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Kimberly_P._Nelson@omb.eop.gov*; and (ii) Lewis W. Walker, Acting Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or by sending an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 8, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21407 Filed 9–12–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549.

Extension: Rule 32a–4, SEC File No. 270–473, OMB Control No. 3235–0530.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 32(a)(2) of the Investment Company Act (15 U.S.C. 80a–31(a)(2)) requires that shareholders of a registered investment management or face-amount certificate company (''fund'') ratify or reject the selection of a fund's independent public accountant. Rule 32a–4 (17 CFR 270.32a–4) exempts a fund from this requirement if (i) the fund's board of directors establishes an audit committee composed solely of independent directors with responsibility for overseeing the fund's accounting and auditing processes,[1] (ii) the fund's board of directors adopts an audit committee charter setting forth the committee's structure, duties, powers and methods of operation, or sets out similar provisions in the fund's charter or bylaws,[2] and (iii) the fund maintains a copy of such an audit committee charter permanently in an easily accessible place.[3]

Each fund that chooses to rely on rule 32a–4 incurs two collections of information burdens. The first, related to the board of directors' adoption of the audit committee charter, occurs once, when the committee is established. The second, related to the fund's maintenance and preservation of a copy of the charter in an easily accessible place, is an ongoing annual burden. The information collection requirement in rule 32a–4 enables the Commission to monitor the duties and responsibilities of an independent audit committee formed by a fund relying on the rule.

Commission staff estimates that, on average, the board of directors takes 15 minutes to adopt the audit committee charter. Commission staff has estimated that with an average of 8 directors on the board,[4] total director time to adopt the charter is 2 hours. Combined with an estimated 1 hour of paralegal time to prepare the charter for board review, the staff estimates a total one-time collection of information burden of 3 hours for each fund. Once a board adopts an audit committee charter, a fund generally maintains it in a file cabinet or as a computer file. Commission staff has estimated that there is no annual hourly burden

[1] Rule 32a–4(a).

[2] Rule 32a–4(b).

[3] Rule 32a–4(c).

[4] This estimate is based on staff discussions with a representative of an entity that surveys funds and calculates fund board statistics based on responses to its surveys.

associated with maintaining the charter in this form.[5]

Because virtually all funds extant have now adopted audit committee charters, the annual one-time collection of information burden associated with adopting audit committee charters is limited to the burden incurred by newly established funds. Commission staff estimates that fund sponsors establish approximately 153 new funds each year,[6] and that all of these funds will adopt an audit committee charter in order to rely on rule 32a–4. Thus, Commission staff estimates that the annual one-time hour burden associated with adopting an audit committee charter under rule 32a–4 going forward will be approximately 459 hours.[7]

As noted above, all funds that rely on rule 32a–4 are subject to the ongoing collection of information requirement to preserve a copy of the charter in an easily accessible place. This ongoing requirement, which Commission staff has estimated has no hourly burden, applies to new funds that adopt an audit committee charter each year and to all funds that have previously adopted the charter and continue to maintain it.

When funds adopt an audit committee charter in order to rely on rule 32a–4, they also may incur one-time costs related to hiring outside counsel to prepare the charter. Commission staff estimates that those costs average approximately $1000 per fund.[8] Commission staff understands that virtually all funds now rely on rule 32a–4 and have adopted audit committee charters, and thus estimates that the annual cost burden related to hiring outside legal counsel is limited to newly established funds.

As noted above, Commission staff estimates that approximately 153 new funds each year will adopt an audit committee charter in order to rely on rule 32a–4. Thus, Commission staff estimates that the ongoing annual cost burden associated with rule 32a–4 in the future will be approximately $153,000.[9]

The estimates of average burden hours and costs are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collections of information required by rule 32a–4 are necessary to obtain the benefits of the rule. The Commission is seeking OMB approval, because an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Lewis W. Walker, Acting Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: September 8, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21408 Filed 9–12–08; 8:45 am]

BILLING CODE 8010–01–P

[5] No hour burden related to such maintenance of the charter was identified by the funds the Commission staff surveyed. Commission staff understands that many audit committee charters have been significantly revised after their adoption in response to the Sarbanes-Oxley Act (Pub. L. No. 107–204, 116 Stat. 745) and other developments. However, the costs associated with these revisions are not attributable to the requirements of rule 32a–4.

[6] This estimate is based on the number of Form N–8As filed from January 2005 through December 2007.

[7] This estimate is based on the following calculation: (3.0 burden hours for establishing charter × 153 new funds = 459 burden hours).

[8] Costs may vary based on the individual needs of each fund. However, based on the staff's conversations with outside counsel that prepare these charters, legal fees related to the preparation and adoption of an audit committee charter usually average $1000 or less. The Commission also understands that the ICI has prepared a model audit committee charter, which most legal professionals use when establishing audit committees, thereby reducing the costs associated with drafting a charter.

[9] This estimate is based on the following calculations: ($1000 cost of adopting charter × 153 newly established funds = $153,000).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58486; File No. SR–ISE–2008–36)

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Non-Displayed Penny Quotes and Orders

September 8, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 28, 2008, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been 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 ISE is proposing to allow non-displayed penny quotes and orders in options that trade in minimum pricing increments greater than one cent. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved rules with respect to the Nasdaq Options

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange (''NOM'') and the Chicago Board Options Exchange (''CBOE'') that permit the entry of orders and quotes in penny increments in options series that have a minimum trading increment greater than one cent.[3] Under these rules, the actual firm price of the order or quote is not displayed to market participants or the public. Rather, the penny price is hidden on the exchange and displayed at the next closest allowable trading increment. To avoid being competitively disadvantaged, the ISE proposes to adopt rules that similarly permit its members to enter orders and quotes in penny increments (''non-displayed penny orders'' and ''non-displayed penny quotes'').

The Exchange proposes to allow both Electronic Access Members and market makers to enter non-displayed penny orders. In addition, Exchange market makers will be permitted to enter non-displayed penny quotes. Orders and quotes will be permitted in one-cent price increments in selected options where the applicable minimum price increment is larger than one-cent.[4] The penny price of such orders will be firm for incoming orders.[5] Non-displayed penny orders and quotes will be displayed at the nearest minimum trading increment for the security, and the penny price of non-displayed penny orders and quotes will not be disclosed to any market participants.

Non-displayed penny orders will participate in executions effected through the Block, Facilitation, Solicited Order and Price Improvement Mechanisms. Both the Block and the Price Improvement Mechanism currently allow members to enter orders and responses in penny increments.[6] Accordingly, a non-displayed penny order will participate in executions effected through the Block and Price Improvement Mechanisms at the penny price. However, when entering orders and responses into the Facilitation and Solicited Order Mechanisms, members currently are limited to the regular trading increment for the security and the split price for the regular trading increment.[7] In order to be consistent with the current rule, the proposal specifies that non-displayed penny orders also will be executed only at the regular increment or split price, as applicable. For example, if the displayed market is $2.00 by $2.05 and there is a hidden penny order to buy at 2.03, the hidden penny order will participate in the execution algorithms applied by the Facilitation and Solicited Order Mechanisms at the split price of $2.025. If the hidden penny price in this example is $2.02, the hidden penny order will participate in the execution algorithms at the regular trading increment of $2.00.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is found in Section 6(b)(5), in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. This rule will enable the Exchange to remain competitive with other options markets that permit orders and quotes to be entered and executed in penny increments.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change as required by Rule 19b–4(f)(6).[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2008–36 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–ISE–2008–36. 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

[3] Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (order approving SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080); Securities Exchange Act Release No. 57716 (April 25, 2008), 73 FR 24329 (May 2, 2008) (order approving SR–CBOE–2007–39).

[4] The Exchange will issue a circular to notify members of the options series in which non-displayed penny quotes and order may be entered.

[5] Incoming orders will receive the firm, non-displayed penny price. For example, if the non-displayed price of a limit order to buy is 2.02, an incoming limit order to sell at 2.01 will be executed at 2.02.

[6] ISE Rule 716, Supplementary Material .09 (regarding penny prices in the Block Mechanism); ISE Rule 723(b)(2) and (c)(2) (regarding penny prices in the Price Improvement Mechanism).

[7] ISE Rule 716, Supplementary Material .06 (regarding split prices in the Facilitation and Solicited Order Mechanisms).

[8] 17 CFR 240.19b–4(f)(6).

Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2008–36 and should be submitted on or before October 6, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21391 Filed 9–12–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58489; File No. SR–NASDAQ–2008–073]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Trade Shares of 12 Funds of the WisdomTree Trust Pursuant to Unlisted Trading Privileges

September 8, 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 29, 2008, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a rule change under section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change to trade, pursuant to unlisted trading privileges (''UTP''), shares (''Shares'') of 12 funds (each a ''Fund'') of the WisdomTree Trust (''Trust'') under Nasdaq Rule 4420(o) (Managed Fund Shares). The text of the proposed rule change is available from Nasdaq's Web site at *http://nasdaq.cchwallstreet.com*, at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq had 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

Nasdaq proposes to trade the Funds on a UTP basis under Nasdaq Rule 4420(o), which governs the trading of ''Managed Fund Shares'' on the Exchange. The Shares will be offered by the Trust, which was established as a Delaware statutory trust on December 15, 2005. The Trust is registered with the Commission as an investment company.[5] The Commission recently approved the listing and trading of these same Funds by NYSE Arca, Inc. on its exchange.[6]

Description of the Shares and the Funds

WisdomTree Asset Management, Inc. (''WisdomTree Asset Management'') is the investment adviser to each Fund.[7] WisdomTree Asset Management is not affiliated with any broker-dealer. Mellon Capital Management serves as the sub-adviser for the Current Income Fund. The Dreyfus Corporation serves as the subadviser to each International Currency Income Fund. The Bank of New York is the administrator, custodian, and transfer agent for each Fund. ALPS Distributors, Inc. serves as the distributor for the Funds.

The Current Income Fund

The Current Income Fund seeks to earn current income while preserving capital and maintaining liquidity by investing primarily in very short term, high-quality money market securities denominated in U.S. dollars. Eligible investments include commercial paper, time deposits and certificates of deposits, asset-backed securities, government bills, government notes, corporate notes, and repurchase agreements. The Current Income Fund intends to maintain an average portfolio maturity of 90 days or less and will not purchase any money market security with a remaining maturity of more than 397 calendar days.

The International Currency Income Funds

Each of the Australian Dollar Fund, British Pound Sterling Fund, Canadian Dollar Fund, Euro Fund, and Japanese Yen Fund: (i) Seeks to earn current income reflective of money market rates available to foreign investors in the specified country or region, and (ii) seeks to maintain liquidity and preserve capital measured in the currency of the specified country or region. Each of these Funds intends to invest primarily in very short term, investment grade money market securities denominated in the non-U.S. currency specified in its name. Eligible investments include short-term securities issued by non-U.S. governments, agencies or instrumentalities, bank debt obligations and time deposits, bankers' acceptances, commercial paper, short-term corporate debt obligations, mortgage backed securities, and asset-backed securities.

Each of the Brazilian Real Fund, Chinese Yuan Fund, Indian Rupee Fund, New Zealand Dollar Fund, South African Rand Fund, and South Korean Won Fund seeks: (i) To earn current income reflective of money market rates available to foreign investors in the specified country; and (ii) to provide exposure to changes in the value of the designated non-U.S. currency relative to the U.S. Dollar. Each of these Funds intends to achieve exposure to the non-U.S. market designated by its name using the following strategy. Each of the Funds will invest primarily in short term U.S. money market securities. In

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 C.F.R. 240.19b–4(f)(6).

[5] *See* Post-Effective Amendment No. 14 to Registration Statement on Form N–1A for the Trust (File Nos. 333–132380 and 811–21864) (''Registration Statement''). The descriptions of the Funds and the Shares contained herein are based on information in the Registration Statement.

[6] *See* Securities Exchange Act Release No. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (order approving SR–NYSEArca–2008–31).

[7] WisdomTree Investments, Inc. (''WisdomTree Investments'') is the parent company of WisdomTree Asset Management.

addition, each such Fund will invest a smaller portion of its assets in forward currency contracts and swaps designed to provide exposure to exchange rates and/or money market instruments available to foreign investors in the non-U.S. market designated in the Fund's name. The combination of U.S. money market securities with forward currency contracts and currency swaps is designed to create a position economically similar to a money market instrument denominated in a non-U.S. currency. A forward currency contract is an agreement to buy or sell a specific currency at a future date at a price set at the time of the contract. A currency swap is an agreement between two parties to exchange one currency for another at a future rate.[8]

Each International Currency Income Fund generally will maintain a weighted average portfolio maturity of 90 days or less and will not purchase any money market instrument with a remaining maturity of more than 397 calendar days.

None of the Funds will invest in non-U.S. equity securities.

The Shares

Each Fund issues and redeems Shares on a continuous basis at net asset value (''NAV'')[9] only in large blocks of shares, typically 50,000 shares or more (''Creation Units''), in transactions with authorized participants. Each International Currency Income Fund may issue and redeem Creation Units in exchange for a designated basket of non-U.S. currency and an amount of U.S. cash, a basket of non-U.S. money market instruments and a designated amount of cash, or simply a designated amount of cash. In addition, creations and redemptions of the Current Income Fund, the Brazilian Real Fund, Chinese Yuan Fund, Indian Rupee Fund, New Zealand Dollar Fund, South African Rand Fund, and South Korean Won Fund are usually in exchange for a basket of U.S. money market instruments and/or a designated amount of cash. Once created, Shares of the Funds trade on the secondary market in amounts less than a Creation Unit. For more information regarding the Shares and the Funds, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes, see the Registration Statement.

Availability of Information

The Funds' Web site (*http://www.wisdomtree.com*), which will be publicly available prior to the public offering of Shares, will include a form of the Prospectus for each Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for each Fund: (1) The prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''); [10] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day before commencement of the Regular Market Session on the Exchange,[11] the Funds will disclose on their Web site the identities and quantities of the securities and other assets that will form the basis for the calculation of NAV for each Fund at the end of the business day (''Disclosed Portfolio'').[12] The Web site and information will be publicly available at no charge.

Investors interested in a particular Fund can also obtain the Trust's Statement of Additional Information (''SAI''), each Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site (*http://www.sec.gov*).

Information regarding market price and volume is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The NAV of each Fund will normally be determined as of the close of the Regular Market Session on Nasdaq (ordinarily 4 p.m. Eastern Time or ''ET'') on each business day. The previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotations and last-sale information for the Shares will be available through the facilities of the Consolidated Tape Association (''CTA''). In addition, the Intraday Indicative Value [13] will be disseminated at least every 15 seconds during the Regular Market Session through the facilities of the CTA.

Initial and Continued Listing

The Shares will be subject to Rule 4420(o), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that for initial and/or continued listing, the Shares must be in compliance with Rule 10A–3 under the Act.[14]

Trading Halts

Nasdaq will halt trading in Shares under the conditions specified in Nasdaq Rules 4120 and 4121. The conditions for a halt include a regulatory halt by the listing market. UTP trading in Shares will also be governed by provisions of Nasdaq Rule 4120(b) relating to temporary interruptions in the calculation or wide dissemination of the Intraday Indicative Value, among other values.

If Nasdaq becomes aware that the NAV or the Disclosed Portfolio with respect to a Share is not disseminated to all market participants at the same time,

[8] Each of these Funds may pursue its objectives through direct investments in money market instruments issued by entities in the applicable non-U.S. country and denominated in the applicable non-U.S. currency when WisdomTree Asset Management believes it is in the best interest of the Fund to do so. The decision to secure exposure directly or indirectly will be a function of, among other things, market accessibility, credit exposure, and tax ramifications for foreign investors. If any of these Funds pursues direct investment, eligible investments will include short-term securities issued by the applicable foreign government and its agencies or instrumentalities, bank debt obligations and time deposits, bankers' acceptances, commercial paper, short-term corporate debt obligations, mortgage-backed securities, and asset-backed securities.

[9] The NAV of each Fund's shares generally is calculated once daily Monday through Friday as of the close of regular trading (the ''NAV Calculation Time''). NAV per share is calculated by dividing a Fund's net assets by the number of Shares outstanding. For more information regarding the valuation of Fund investments in calculating a Fund's NAV, *see* the Registration Statement.

[10] The Bid/Ask Price of a Fund is determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of such Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Funds and their service providers.

[11] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 7 a.m. to 9:30 a.m.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m.).

[12] Under accounting procedures followed by the Funds, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in the NAV on such business day. Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[13] The Intraday Indicative Value is also sometimes referred to as the ''Portfolio Indicative Value'' with respect to these securities and is based on the current value of the components of the Disclosed Portfolio.

[14] *See* 17 CFR 240.10A–3.

it will halt trading in such series until such time as the net asset value or the Disclosed Portfolio is available to all market participants.

Additionally, Nasdaq may cease trading Shares if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. Nasdaq will also follow any procedures with respect to trading halts as set forth in Nasdaq Rule 4120(c). Finally, Nasdaq will stop trading Shares if the listing market delists them.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares 7 a.m. until 8 p.m.[15] The minimum trading increment for Shares on Nasdaq will be $0.01.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (including exchange-traded funds) to monitor trading in the Shares and the Exchange represents that these procedures are adequate to address any concerns about the trading of the Shares on Nasdaq. Trading of the Shares through Nasdaq will be subject to FINRA's surveillance procedures for equity securities in general and exchange-traded funds in particular.[16] The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliate members of the ISG.[17]

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in baskets of shares (and that Shares are not individually redeemable); (2) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Fund value will not be calculated or publicly disseminated; and (6) trading information.

The Exchange notes that investors purchasing Shares directly from a Fund will receive a prospectus. Members purchasing Shares from a Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Information Circular will also reference that the CFTC has regulatory jurisdiction over the trading of futures contracts.

The Information Circular will also disclose the trading hours of the Shares of the Funds and that the NAV for the Shares will be calculated after 4 p.m. (ET) each trading day. The Circular will disclose that information about the Shares of each Fund and the corresponding Indexes will be publicly available on the Funds' Web site.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with section 6(b) of the Act[18] in general and section 6(b)(5) of the Act[19] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Nasdaq believes that its rules and procedures governing the trading of the Shares pursuant to UTP are also consistent with the goals section 6(b)(5) and the protection of investors.

In addition, Nasdaq believes that the proposal is consistent with Rule 12f–5 under the Act[20] because it deems each Share to be an equity security, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.[21]

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate 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[22] and Rule 19b–4(f)(6) thereunder.[23]

Nasdaq has asked the Commission to waive the 30-day operative delay. The Commission believes that such waiver is consistent with the protection of investors and the public interest because such waiver should benefit investors by creating, without undue delay, additional competition in the market for the Shares. The Commission has previously approved the listing and trading of the Shares on another exchange[24] and finds that the proposed rule change does not present any novel or significant regulatory issues. Therefore, the Commission designates the proposed rule change as operative upon filing.[25]

At any time within 60 days of the filing of the proposed rule change the

[15] *See* Nasdaq Rule 4420.

[16] FINRA surveils trading on Nasdaq pursuant to a regulatory services agreement. Nasdaq is responsible for FINRA's performance under this regulatory services agreement.

[17] For a list of the current members and affiliate members of ISG, *see http://www.isgportal.com.*

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(5).

[20] 17 CFR 240.12f–5.

[21] *See* e-mail from Jonathon F. Cayne, Assistant General Counsel, Nasdsaq to Mitra Mehr, Special Counsel, Division of Trading and Markets, Commission on September 8, 2008, clarifying text.

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 23 17 CFR 240.19b–4(f)(6). The Commission notes that Nasdaq has satisfied the five day pre-filing notice requirement.

[24] *See supra* note 6.

[25] For purposes only of waiving the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2008–073 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–NASDAQ–2008–073. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *http://www.sec.gov/rules/sro.shtml*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also 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–NASDAQ–2008–073 and should be submitted on or before October 6, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21392 Filed 9–12–08; 8:45 am]

BILLING CODE 8010–01–P

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58487; File No. SR–NYSE–2008–59]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change To Reduce the Period Within Which Companies Must Issue a Press Release After the Exchange Notifies Them That They Are Noncompliant With Exchange Listing Requirements

September 8, 2008.

I. Introduction

On July 22, 2008, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to reduce the period within which companies must issue a press release after the Exchange notifies them that they are noncompliant with Exchange listing requirements. The proposed rule change was published for comment in the **Federal Register** on August 4, 2008.[3] The Commission received one comment in support of the proposal.[4] This order approves the proposed rule change.

II. Description of the Proposal

Section 802.02 of the NYSE's Listed Company Manual (the ''Manual'') currently requires a U.S. company to issue a press release within 45 days of receiving written notification from the Exchange that it has fallen below the Exchange's continued listing standards. This section further provides that if the company fails to issue the press release during the allotted 45 days, the Exchange will issue the requisite press release. Similarly, Section 802.03 of the Manual currently requires a non-U.S. company to issue a press release within 90 days of receiving written notification from the Exchange that it has fallen below the Exchange's listing standards. In addition, if the company fails to issue the press release during the allotted time, the Exchange will issue the required press release.

The Exchange proposes to amend Section 802.02 of the Manual to provide that a U.S. company must disclose receipt of written notification that it has fallen below the Exchange's listing standards by issuing a press release within the amount of time allotted by the SEC for companies to disclose such an occurrence, but in any event, no later than four business days after receipt of notification from the Exchange.[5] Further, the amended rule would provide that the Exchange will issue a press release on the subject itself if the company has not acted within this allotted period. The Exchange notes that Commission rules currently require companies to file a Form 8–K within four business days of being notified by the Exchange that it does not satisfy a rule or standard for continued listing on the Exchange.[6] The Exchange, therefore, believes that the current time period in its own rules of 45 days is too long in light of the much earlier public notice required by the Form 8–K rule.

The Exchange also proposes to amend Section 802.03 of the Manual to require a non-U.S. company to issue a press release within 30 days of receiving written notification that it has fallen below the Exchange's listing standard. Further, if the company does not issue a press release within that 30-day period, the Exchange will do so. The Exchange notes that, while foreign private issuers are not subject to the Form 8–K requirement imposed on domestic issuers, the Exchange believes that 90 days is an excessive period to give companies to make such a material disclosure. As such, the Exchange proposes to reduce from 90 days to 30 days the period within which foreign private issuers must issue a press release with regard to a notification by the Exchange of noncompliance with Exchange listing standards.

III. Discussion

After careful review, the Commission finds that the proposed rule change is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58235 (July 28, 2008), 73 FR 45262.

[4] *See* email from R. Cameron Brewer, dated August 23, 2008.

[5] The Exchange notes that companies that are incorporated in jurisdictions outside the United States but that do not qualify as foreign private issuers are treated as domestic companies for purposes of Section 802.02.

[6] Item 3.01 of Form 8–K requires a registrant to file a Form 8–K within four business days of receipt of notice from the national securities exchange that maintains the principal listing for any class of the registrant's common equity that the registrant or such class of the registrant's securities does not satisfy a rule or standard for continued listing on the exchange.

consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of a national securities exchange be 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.[8]

The Commission believes that it is appropriate for the NYSE to align the timing requirement in Section 802.02 of the Manual for issuance of a press release when a company has received notice that it has fallen below the Exchange's continued listing standards with the Commission's timing requirement for providing notification of such event on the Form 8–K. The Commission believes that this change will ensure that a company issues a press release no later than the date it is currently required to file a Form 8–K providing notice of such event. The Commission notes that the amended rule provides that the company must issue a press release within the time period allotted by SEC rules, but in any event, no longer than four business days after notification. The Commission believes that reducing the time period from 45 days to 4 days within which companies must issue a press release is consistent with the protection of investors and the public interest because it will provide investors with earlier press release notification that the company has fallen out of compliance with Exchange listing requirements and avoids any confusion by conforming the time periods in the NYSE rules with current Commission requirements.

Further, the Commission believes that it is appropriate for the NYSE to reduce from 90 days to 30 days the period within which non-U.S. companies must issue a press release regarding a notification by the Exchange of noncompliance with the Exchange's listing standards. The Commission believes that this change should still allow companies sufficient time to make the required disclosure, while at the same time providing investors with a more timely notification of important news that the company does not satisfy a rule or standard for continued listing on the Exchange. The Commission notes that non-U.S. companies that do not qualify as foreign private issuers would have to comply with the amended disclosure for domestic companies pursuant to Section 802.02.[9]

The Commission also believes that it is appropriate for the Exchange to issue a press release itself in the event that a company has not acted within the new time periods required by this proposed rule change. This will ensure that investors are provided notification of a company's non-compliance in a timely fashion, regardless of a company's failure to meet the timing requirements of these rules. The Commission notes that the existing rule being amended herein did allow the Exchange to make such disclosure under the longer time periods. This proposal will permit a continuation of this authority, but with the updated time periods.[10]

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSE–2008–59) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21332 Filed 9–12–08; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b)(5).

[8] 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).

[9] *See supra* note 5.

[10] The Commission also notes that nothing in this proposal affects a company's obligations to disclose material news in a timely fashion. *See* Section 202.05 of the Manual.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58488; File No. SR–NYSE–2008–81]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Rule Proposed by New York Stock Exchange LLC To Suspend the Operation of NYSE Rule 123D With Respect to Trading in the Securities of Fannie Mae and Freddie Mac

September 8, 2008.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 8, 2008, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed the original filing with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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

New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') is proposing to suspend the operation of NYSE Rule 123D(3) with respect to trading in all securities of Fannie Mae and Freddie Mac.[4] The suspension would operate through the close of primary trading on the NYSE on September 15, 2008. If additional time is needed, the Exchange will submit

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 C.F.R. 40.19b–4.

[4] This rule proposal affects the following securities: FRE Voting common stock; FRE 19Z Zero Coupon Subordinated Capital Debentures, due November 29, 2019; FRE PR B Variable Rate, Non-Cumulative Preferred Stock; FRE PR F 5% Non-Cumulative Preferred Stock; FRE PR G Variable Rate, Non-Cumulative Preferred Stock; FRE PR H 5.1% Non-Cumulative Preferred Stock; FRE PR K 5.79% Non-Cumulative Preferred Stock; FRE PR L Variable Rate, Non-Cumulative Preferred Stock; FRE PR M Variable Rate, Non-Cumulative Preferred Stock; FRE PR Q Variable Rate, Non-Cumulative Preferred Stock; FRE PR P 6% Non-Cumulative Preferred Stock; FRE PR N Variable Rate, Non-Cumulative Preferred Stock; FRE PR O 5.81% Non-Cumulative Preferred Stock; FRE PR R 5.7% Non-Cumulative Preferred Stock; FRE PR S Variable Rate, Non-Cumulative Perpetual Preferred Stock; FRE PR T 6.42% Non-Cumulative Perpetual Preferred Stock; FRE PR U 5.9% Non-Cumulative Perpetual Preferred Stock; FRE PR V 5.57% Non-Cumulative Perpetual Preferred Stock; FRE PR W 5.66% Non-Cumulative Perpetual Preferred Stock; FRE PR X 6.02% Non-Cumulative Perpetual Preferred Stock; FRE PR Y 6.55% Non-Cumulative Perpetual Preferred Stock; FRE PR Z Fixed-to-Floating Rate Non-Cumulative Perpetual Preferred Stock, $1.00 Par Value; FNM Common stock; FNM 19Z Zero Coupon Subordinated Capital Debentures due October 9, 2019; FNM 14Z Zero Coupon Debentures due July 5, 2014; FNA 8.75% Non-Cumulative Mandatory Convertible Prefered Stock, Series 2008–1; FNM PR H 5.81% Non-Cumulative Preferred Stock, Series H; FNM PR L 5.125% Non-Cumulative Preferred Stock, Series L; FNM PR M 4.75% Non-Cumulative Preferred Stock, Series M; FNM PR N 5.50% Non-Cumulative Preferred Stock, Series N, without par value; FNM PR G Variable Rate, Non-Cumulative Preferred Stock, Series G; FNM PR P Variable Rate, Non-Cumulative Preferred Stock, Series P; FNM PR Q 6.75% Non-Cumulative Preferred Stock, Series Q; FNM PR R 7.625% Non-Cumulative Preferred Stock, Series R; FNM PR S Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series S; FNM PR T 8.25% Non-Cumulative Preferred Stock, Series T; FNM PR F Variable Rate, Non-Cumulative Preferred Stock, Series F; FNM PR I 5.375% Non-Cumulative Preferred Stock, Series I. *See* email from Dan Labovitz, Vice President, Office of the General Counsel, NYSE Euronext, to Nathan Saunders, Special Counsel, Commission, dated September 8, 2008 (''September 8 Email'').

another rule filing to the Commission pursuant to section 19(b)(1) of the Securities Exchange Act [5] and Rule 19b–4 [6] thereunder.[7]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Regulation NMS, adopted by the Securities and Exchange Commission (''SEC'') in April 2005,[8] provides that each trading center intending to qualify for trade-through protection under Regulation NMS Rule 611 [9] is required to have a Regulation NMS-compliant trading system fully operational by March 5, 2007 (the ''Trading Phase Date'').[10]

For stocks priced below $1.00 per share, Regulation NMS Rule 612 [11] permits markets to accept bids, offers, orders and indications of interest in increments smaller than a $0.01, but not less than $0.0001, and to quote and trade such stocks in sub-pennies. Markets may choose not to accept such bids, offers, orders or indications of interest and the NYSE has done so, maintaining a minimum trading and quoting variation of $0.01 for all securities trading below $100,000. *See* NYSE Rule 62.

The SEC's interpretation of Rule 612 requires a market that routes an order to another market in compliance with Rule 611 and receives a sub-penny execution, to accept the sub-penny execution, report that execution to the customer, and compare, clear and settle that trade. The SEC, however, provided a limited exemption to Rule 611's proscription against trade-throughs to protected quotes that include a sub-penny component to such quotes that are better-priced by a minimum of $0.01.[12]

In March, 2007, the Exchange amended Rule 123D to provide for a ''Sub-penny trading'' condition because the Exchange's trading systems did not then accommodate sub-penny executions on orders routed to better-priced protected quotations, nor could it recognize a quote disseminated by another market center if such quote had a sub-penny component and, therefore, could have inadvertently traded through better protected quotations. The amended rule automatically halts trading on the Exchange in a security whose price was about to fall below $1.00, without delisting the security, so that the security could continue to trade on other markets that deal in bids, offers, orders or indications of interest in sub-penny prices, until the price of the security had recovered sufficiently to permit the Exchange to resume trading in minimum increments of no less than one penny or the issuer is delisted for failing to correct the price condition within the time provided under NYSE rules.[13] A subsequent amendment established that any orders received by the NYSE in a security subject to a ''Sub-penny trading'' condition would be routed to NYSE Arca, Inc. and handled in accordance with the rules governing that market.[14]

Federal Government Takeover of Fannie Mae and Freddie Mac

On September 7, 2008, Secretary of the Treasury Henry Paulson announced that the federal government would force Fannie Mae and Freddie Mac into a conservatorship that will result in the companies issuing warrants to the federal government representing approximately 80% ownership of the entities. Details of the plan are available at the Department of the Treasury's Web site, at *http://www.treas.gov/press/releases/reports/pspa_factsheet_090708%20hp1128.pdf*.

The NYSE anticipates that the government's action will have a significantly disruptive effect on the trading in the common stock of both Fannie Mae and Freddie Mac, which may cause those shares to trade below $1.00 per share. Ordinarily, such an action would result in the NYSE invoking its sub-penny trading halt, which would halt trading on the primary listing venue of the securities. But, given the scope of the government's action, the NYSE believes that the market will substantially benefit from having the most available liquidity and the greatest number of venues in which investors can trade the securities of Fannie Mae and Freddie Mac, and would further benefit from the efforts of the NYSE specialists in those securities to stabilize the markets as public investors react to the news. The NYSE further believes that these benefits outweigh the potential harms that NYSE Rule 123D was intended to address, and that therefore, a temporary suspension of that rule for this limited purpose would serve the interests of customers and the investing public, notwithstanding the possibility that some investors may receive an inferior execution due to sub-penny quoting. The NYSE recognizes that the suspension of Rule 123D does not thereby exempt the Exchange from Reg NMS Rules 611 and 612, but notes that the inferior executions that may result would only amount to fractions of a penny per share, and therefore the potential harm, even in the case of large orders, would be minimal.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [15] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5) [16] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[5] 17 CFR 240.19b–4.

[6] 15 U.S.C.78s(b)(1).

[7] *See* September 8 Email, *supra* note 4.

[8] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 17 CFR Parts 200, 201, 230, 240, 242, 249 and 270.

[9] *See* 17 C.F.R. § 242.611.

[10] *See* Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007) (S7–10–04).

[11] *See* 17 C.F.R. § 242.612. Rule 612 originally was to become effective on August 29, 2005, but the date was later extended to January 29, 2006. *See* Securities Exchange Act Release No. 52196 (Aug. 2, 2005), 70 FR 45529 (Aug. 8, 2005).

[12] Order Granting National Securities Exchanges a Limited Exemption from Rule 612 of Regulation NMS under the Securities Exchange Act of 1934 to Permit Acceptance by Exchanges of Certain Sub-Penny Orders. *See* Securities and Exchange Commission Release No. 54714 (November 6, 2006).

[13] *See* Securities and Exchange Commission Release No. 34–55398; File No. SR–NYSE–2007–25 (Mar. 5, 2007).

[14] *See* Securities and Exchange Commission Release No. 34–55537; File No. SR–NYSE–2007–30 (Mar. 27, 2007).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [17] and subparagraph (f)(6) of Rule 19b–4 thereunder.[18]

A proposed rule change filed under 19b–4(f)(6) normally does not become operative until 30 days after the date of filing.[19] However, Rule 19b–4(f)(6)(iii) [20] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that the proposed relief is limited in nature, and that the benefits of the proposed relief outweigh the potential harms. Moreover, given the rapidity of recent developments with respect to Fannie Mae and Freddie Mac, the Exchange believes that immediate effectiveness is required in order to avoid significant disruption to the market.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission therefore grants the Exchange's request and designates the proposal to be operative upon filing.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NYSE–2008–81 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–81. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–81 and should be submitted on or before October 6, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21333 Filed 9–12–08; 8:45 am]

BILLING CODE 8010–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] *Id.* In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE has satisfied this requirement.

[20] *Id.*

[21] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58469; File No. SR–NYSEArca–2008–92]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing of MacroShares Major Metro Housing Trusts

September 5, 2008.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 25, 2008, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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

Pursuant to the provisions of section 19(b)(1) of the Act,[4] the Exchange, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or the ''Corporation'') proposes to list and trade under NYSE Arca Equities Rule 8.400 (''Paired Trust Shares'') the shares of the MacroShares Major Metro Housing Up Trust (''Up Trust'') and the MacroShares Major Metro Housing Down Trust (''Down Trust'') (collectively, the ''Trusts''). The shares of the Up Trust are referred to as the Up MacroShares, and the shares of the Down Trust are referred to as the Down MacroShares (collectively, the ''Shares''). The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

Public Reference Room of the Commission.

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

The Exchange proposes to list and trade the Up MacroShares and the Down MacroShares under Rule 8.400.[5] The Up MacroShares and the Down MacroShares will be offered by the Up Trust and the Down Trust, respectively, established by MACRO Inflation Depositor, LLC, as depositor, under the laws of the State of New York. The Trusts are not registered with the Commission as investment companies.[6]

Description of the Shares and the Trusts

The Up Trust and the Down Trust intend to issue Up MacroShares and Down MacroShares, respectively, on a continuous basis at the direction of authorized participants, as described in more detail below. The Up MacroShares and the Down MacroShares represent undivided beneficial interests in the Up Trust and the Down Trust, respectively. The Shares are ''Trading Shares'' as defined in NYSE Arca Equities Rule 8.400(b)(1)(B).

The assets of the Down Trust will consist of an income distribution agreement and settlement contracts entered into with the Up Trust. Similarly, the assets of the Up Trust will consist of an income distribution agreement and settlement contracts entered into with the Down Trust.[7] Each Trust will also hold U.S. Treasuries and repurchase agreements on U.S. Treasuries to secure its obligations under the income distribution agreement and the settlement contracts. The trustee for the Trusts is State Street Bank and Trust Company (''Trustee'').

The Trusts will make quarterly distributions of net income, if any, on the treasuries and a final distribution of all assets it holds on deposit on the final scheduled termination date, an early termination date or a redemption date. Quarterly distributions of net income, if any, will be made on distribution dates that are scheduled to occur in April, July, October and January of each year. Each quarterly and final distribution will be based on the value of the S&P/Case-Shiller Composite-10 Home Price Index (''Index''), as well as on prevailing interest rates on U.S. Treasury obligations. The last published value of the S&P/Case-Shiller Composite-10 Home Price Index is referred to as the ''Reference Value of the Index'' or ''Reference Value'', as discussed below.[8]

The starting level for the Reference Value of the Index for purposes of the transactions described in the Registration Statements is 181.48.[9] If the Reference Value rises above its starting level, the Up Trust's Underlying Value (as described below) will increase to include all of its assets plus a portion of the assets of the paired Down Trust. This portion of assets due from the Down Trust will be multiplied by a ''leverage factor'' of 2. Conversely, if the level of the Reference Value of the Index falls below its starting level on and after the closing date, the Up Trust's Underlying Value will decrease, because a portion of its assets will be included in the Underlying Value of its paired Down Trust, such portion being multiplied by the leverage factor.

Under the income distribution agreement, as of any distribution date, each Trust will either (a) be required to pay a portion of its available income to the other Trust or (b) be entitled to receive all or a portion of the other Trust's available income, based, in each case, on the Reference Value for each day during the preceding calculation period. Under each settlement contract, in connection with the final scheduled termination date, an early termination date or any redemption date, each Trust will either (a) be required to make a final payment out of its assets to the other Trust, or (b) be entitled to receive a final payment from the other Trust out of the assets of the other Trust, based, in each case, on the Reference Value of the Index on the last calendar day preceding the final scheduled termination day, an early termination day or the relevant redemption date.[10]

The Reference Value of the Index

The amount of each payment required to be made by the paired trusts under the income distribution agreement will be based on the daily level of the Reference Value of the Index during the preceding calculation period and the amount of the settlement payment to be made under the settlement contracts will be based on the Reference Value of the Index on the day preceding the business day on which those payments are made on a redemption date, an early

[5] The Commission approved trading a similar product on the Exchange pursuant to unlisted trading privileges (''UTP'') when it approved NYSE Arca Equities Rule 8.400. *See* Securities Exchange Act Release No. 55033 (December 29, 2006), 72 FR 1253 (January 10, 2007) (SR–NYSEArca–2006–75) (approving UTP trading of Claymore MACROshares Oil Up Tradeable Shares and Claymore MACROshares Oil Down Tradeable Shares). The Commission also approved for listing and trading the same product on the American Stock Exchange. *See* Securities Exchange Act Release No. 54839 (November 29, 2006), 71 FR 70804 (December 6, 2006) (SR–Amex–2006–82) (approving listing and trading Claymore MACROshares Oil Up Tradeable Shares and Claymore MACROshares Oil Down Tradeable Shares). In addition, the Commission has approved a proposed rule change to amend NYSE Arca Equities Rule 8.400 to permit listing and trading of MacroShares Medical Inflation Up Trust and the MacroShares Medical Inflation Down Trust, which are similar in structure to the Trusts. *See* Securities Exchange Act Release No. 58312 (August 5, 2008), 73 FR 46689 (August 11, 2008) (SR–NYSEArca–2008–63). The Trusts will be listed and traded pursuant to NYSE Arca Equities Rule 8.400 as amended in SR–NYSEArca–2008–63.

[6] The Shares are being offered by the Trusts under the Securities Act of 1933, as amended, 15 U.S.C. 77a. On August 6, 2008, the depositor filed with the Commission Registration Statements on Form S–1 (Amendment No. 1) for the Up MacroShares (File No. 333–151522) (''Up Trust Registration Statement'') and for the Down MacroShares (File No. 333–151523)(''Down Trust Registration Statement'', and, together with the Up Trust Registration Statement, ''Registration Statements''). Descriptions herein relating to the operation of the Trusts and the S&P/Case-Shiller Home Price Indices are based on the Registration Statements.

[7] The income distribution agreement and applicable settlement contracts are attached as exhibits to the Registration Statements.

[8] The Reference Value of the Index is the Reference Price for purposes of NYSE Arca Equities Rule 8.400.

[9] This figure is as of July 29, 2008 and is subject to updating to be included in the Registration Statements upon effectiveness.

[10] The final distribution made on the Up MacroShares or Down MacroShares on the final scheduled termination date, an early termination date or a redemption date will be based upon the Underlying Value of the Up Trust or Down Trust, respectively, on the last calendar day, whether or not such day is a business day, that precedes such final scheduled termination date, early termination date, or redemption date. Underlying Value will be calculated for each day based upon the Reference Value of the Index for that day. The Underlying Value of the Up Trust or Down Trust on each day of measurement represents the aggregate amount of the assets in the paired trusts to which the Up Trust or Down Trust would be entitled if the settlement contracts were settled on that day. The Underlying Value of the Up Trust or Down Trust on each day of measurement also represents the aggregate final distribution to which holders of the Up MacroShares would be entitled if those shares were redeemed on that day.

The Underlying Value of a Trust will be equal, on any calendar day occurring during any Calculation Period, for so long as the proportion of assets on deposit in the Up and Down Trust is one-to-one. The methodology for calculating the Underlying Value for the Trusts is described in the Registration Statements.

termination date or the final scheduled termination date. The term ''Reference Value of the Index'' refers to the value of the Index, as calculated and published by Standard & Poor's (''S&P'') on the most recent Index Publication Day.[11] If the relevant date of measurement is an Index Publication Day, then the Reference Value of the Index will be the value calculated and published on that day. The Index is maintained and governed by the S&P/Case-Shiller Index Committee, whose members are drawn from S&P, Fiserv Fulfillment Services, Inc. and leading industry experts; S&P designates the Index Committee Chairman and its representatives retain the controlling majority of such committee.

The S&P/Case-Shiller Home Price Indices (''Indices'') measure the change in home prices in one or several geographic regions of the United States. They are calculated monthly and are publicly available for 20 major metropolitan areas (Metropolitan Statistical Areas or MSAs), which are also aggregated to form two composites—one comprised of 10 of the metro areas, the other comprised of all 20. The S&P/Case-Shiller Composite-10 Home Price Index is a weighted average of the following 10 S&P/Case-Shiller Metro Area Home Price Indices: the S&P/Case-Shiller Boston Home Price Index, the S&P/Case-Shiller Chicago Home Price Index, the S&P/Case-Shiller Denver Home Price Index, the S&P/Case-Shiller Las Vegas Home Price Index, the S&P/Case-Shiller Los Angeles Home Price Index, the S&P/Case-Shiller Miami Home Price Index, the S&P/Case-Shiller New York City Area Home Price Index, the S&P/Case-Shiller San Diego Home Price Index, the S&P/Case-Shiller San Francisco Home Price Index, and the S&P/Case-Shiller Washington, DC Home Price Index. The value of the Index on any Index Publication Day reflects home prices for the second calendar month preceding the month in which such Index Publication Day occurs.

The Index is the result of a combination, based on a market weighted average, of ten of the Indices for separate MSAs. The current Index component weights and the factors considered in calculating the separate Indices on which the Index is based are described below.[12]

Overview of the S&P/Case-Shiller Home Price Indices and the Index

The Indices measure changes in housing market prices given a constant level of quality. Changes in the types and sizes of houses or changes in the physical characteristics of houses are specifically excluded from the calculations to avoid incorrectly affecting the applicable index value.

The Indices use the ''repeat sales method'' of index calculation—an approach that is widely recognized as the premier methodology for indexing housing prices—which uses data on properties that have sold at least twice, in order to capture the true appreciated value of each specific sales unit.

The Indices originated in the 1980s by Case Shiller Weiss's research principals, Karl E. Case and Robert J. Shiller. At the time, Case and Shiller developed the repeat sales pricing technique. According to the Registration Statements, this methodology is recognized as the most reliable means to measure housing price movements and is used by other home price index publishers, including the Office of Federal Housing Enterprise Oversight (OFHEO).

Eligibility Criteria

The Indices are designed to measure, as accurately as possible, changes in the total value of all existing single-family housing stock. The methodology samples all available and relevant transaction data to create matched sale pairs for pre-existing homes.

The Indices do not sample sale prices associated with new construction, condominiums, co-ops/apartments, multi-family dwellings, or other properties that cannot be identified as single-family.

The factors that determine the demand, supply, and value of housing are not the same across different property types. Consequently, the price dynamics of different property types within the same market often vary, especially during periods of increased market volatility. In addition, the relative sales volumes of different property types fluctuate, so Indices that are segmented by property type will more accurately track housing values.

MSA Index Construction

The Indices are based on observed changes in home prices. They are designed to measure increases or decreases in the market value of residential real estate in 20 defined MSAs and three price tiers—low, middle and high. In contrast, the Indices are, specifically, not intended to measure recovery costs after disasters, construction or repair costs, or other such related items.

The Indices are calculated monthly by FISERV, using a three-month moving average algorithm. Home sales pairs are accumulated in rolling three-month periods, on which the repeat sales methodology is applied. The index point for each reporting month is based on sales pairs found for that month and the preceding two months. For example, the December 2005 index point is based on repeat sales data for October, November and December of 2005. This averaging methodology is used to offset delays that can occur in the flow of sales price data from county deed recorders and to keep sample sizes large enough to create meaningful price change averages.

To calculate the Indices, data are collected on transactions of all residential properties during the months in question. The main variable used for index calculation is the price change between two arms-length sales of the same single-family home. Home price data are gathered after that information becomes publicly available at local recording offices across the country. Available data usually consist of the address for a particular property, the sale date, the sale price, the type of property, and in some cases, the name of the seller, the name of the purchaser, and the mortgage amount.

For each home sale transaction, a search is conducted to find information regarding any previous sale for the same home. If an earlier transaction is found, the two transactions are paired and are considered a ''repeat sale.'' Sales pairs are designed to yield the price change for the same house, while holding the quality and size of each house constant.

All available arms-length transactions for single-family homes are candidates for sale pairs. When they can be identified, transactions with prices that do not reflect market value are excluded from sale pairs. This includes: (1) Non-arms-length transactions (*e.g.*, property transfers between family members); (2) transactions where the property type designation is changed (*e.g.*, properties originally recorded as single-family homes are subsequently recorded as condominiums); and (3) suspected data errors where the order of magnitude in values appears unrealistic.

Each sales pair is aggregated with all other sales pairs found in a particular MSA to create the MSA-level index. 10

[11] ''Index Publication Day'' means the business day in each month on which S&P publishes the value for the S&P/Case-Schiller Composite-10 Home Price Index for the second preceding month.

[12] The current normalized composite weights for the Index are as follows: Year 2000 on—Boston: 0.07412188, Chicago: 0.08886762, Denver: 0.03682453, Las Vegas: 0.01480245, Los Angeles: 0.21161961, Miami: 0.04986164, New York: 0.27239040, San Diego: 0.05513356, San Francisco: 0.11787881, Washington, DC: 0.07849949. Source: Standard & Poor's (S&P/Case-Shiller Home Price Indices Methodology) and Fiserv.

of the 20 Indices are then combined by S&P, using a market-weighted average, to create the Index (as noted above).[13]

The Weighting of Sales Pairs

The Indices are designed to reflect the average change in all home prices in a particular geographic market. However, individual home prices are used in these calculations and can fluctuate for a number of reasons. In many of these cases, the change in value of the individual home does not reflect a change in the housing market of that area; it only reflects a change in that individual home. The index methodology addresses these concerns by weighting sales pairs.

Different weights are assigned to different changes in home prices based on their statistical distribution in that geographic region. The goal of this weighting process is to measure changes in the value of the residential real estate market, as opposed to atypical changes in the value of individual homes. These weighting schemes include:

If there is a large change in the prices of a sales pair relative to the statistical distribution of all price changes in the area, then it is possible that the home was remodeled, rebuilt or neglected in some manner during the period from the first sale to the second sale. Or, if there were no physical changes to the property, there may have been a recording error in one of the sale prices, or an excessive price change caused by idiosyncratic, non-market factors. Since the Indices seek to measure homes of constant quality, the methodology will apply smaller weights to homes that appear to have changed in quality or sales that are otherwise not representative of market price trends.

Data related to homes that sell more than once within six months are excluded from the calculation of any Indices. Historical and statistical data indicate that sales made within a short interval often indicate that one of the transactions: (1) Is not arms-length, (2) precedes or follows the redevelopment of a property, or (3) is a fraudulent transaction.

Sales pairs are also weighted based on the time interval between the first and second sales. If a sales pair interval is longer, then it is more likely that a house may have experienced physical changes. Sales pairs with longer intervals are, therefore, given less weight than sales pairs with shorter intervals.

Each sales pair is assigned a weight equal to the first sale price to ensure that the Indices track the aggregate/average value of all homes in a market.

Index Governance

The S&P/Case-Shiller Home Price Indices and the Index are maintained and governed by the S&P/Case-Shiller Index Committee. The Index Committee members are drawn from S&P, Fiserv Fulfillment Services, Inc. and leading industry experts; S&P designates the Index Committee Chairman. The Index Committee has complete discretion to determine how the Indices and the Index are calculated. In addition, the Index Committee may revise index policy covering rules for selecting houses to be considered for the index and extraordinary events, such as natural disasters, that may result in special consideration in the index in any given month. S&P considers information about changes to the Indices and related matters to be potentially market moving and material. Therefore, all Index Committee discussions are confidential. The Index Committee has no broker-dealer members.[14]

For more information on the index construction process, pairing sales, controlling data quality, index maintenance, and the repeat sales methodology, see the ''S&P/Case-Shiller Home Price Indices: Index Methodology'' document, available at *http://www.macromarkets.com*.

Termination Triggers

Following the occurrence of specified events, referred to in the Registration Statements as ''Termination Triggers,'' the income distribution agreement and the settlement contracts will automatically terminate and the Trustee will redeem all of the Paired Shares on the next scheduled Distribution Date. Among the events that will constitute Termination Triggers are the following:

—S&P fails to publish the Index or S&P fails to make the Reference Value of the Index available to the Paired Trusts for purposes of calculating Underlying Value, in either case, for 3 consecutive Index Publication Days;

—On any Index Publication Day, the Index rises to or above 258.61,[15] at which point the Down Trust would be entitled to approximately 85% of the Up Trust's assets under the settlement contracts, or the Index falls to or below 104.35,[16] at which point the Up Trust would be entitled to approximately 85% of the Down Trust's assets under the settlement contracts, and remains at or above this value or at or below this value, as applicable, for the next two (2) consecutive Index Publication Days;

—The Down MacroShares and/or the Up MacroShares are delisted by NYSE Arca. Additional Termination Triggers are described in the Registration Statements.

Calculation of Underlying Value

The Final Distribution made on the Down MacroShares on the Final Scheduled Termination Date, an Early Termination Date or a Redemption Date will be based upon the Underlying Value of the Down Trust on the last calendar day that precedes the Final Scheduled Termination Date, an Early Termination Date or the relevant Redemption Date. Underlying Value will be calculated for each calendar day based upon the Reference Value of the Index. The Underlying Value of the Down Trust on any date of measurement represents the aggregate amount of the assets in the Paired Trusts to which the Down Trust would be entitled if the settlement contracts were settled on that day. The Underlying Value of the Down Trust on each day also represents the aggregate Final Distribution to which holders of the Down MacroShares would be entitled if those Shares were redeemed on that day. The Underlying Value of the Up Trust on any day represents the aggregate amount of the assets in the Paired Trusts to which the Up Trust would be entitled if the settlement contracts were settled on that day. The Underlying Value of the Up Trust on each day also represents the aggregate Final Distribution to which holders of the Up MacroShares would be entitled if those shares were redeemed on that day.

An increase in the Reference Value of the Index results in a proportionate decrease in the Underlying Value of the Down Trust, multiplied by the leverage factor. A decrease in the Reference Value of the Index results in a proportionate increase in the Underlying Value of the Down Trust, multiplied by the leverage factor. After the closing date, the Reference Value of the Index may fluctuate above or below a ''starting level'' of 181.48.[17] The proportion of the funds in the Down Trust and the Up Trust will initially be 1:1 and this proportion will be sought to be maintained throughout the entire

[13] *See* note 11, *supra*.

[14] S&P employee Index Committee members and any other S&P employees with access to S&P/Case-Shiller index data are subject to The McGraw-Hill Companies, Inc. Code of Business Ethics and to additional policies that prohibit insider trading and that cover securities trading, information security and information dissemination.

[15] *See* note 9, *supra*.

[16] *See* note 9, *supra*.

[17] *See* note 9, *supra*.

transaction by virtue of the requirement that redemptions and issuances must be done in MacroShares Units composed of 50,000 Down MacroShares and 50,000 Up MacroShares. The Underlying Value formula as described in the Registration Statements, and the requirement that Down MacroShares can only be issued and redeemed in paired optional redemptions and paired issuances and only in the form of MacroShares Units, is intended to ensure that a change of 3.63 [18] in the Reference Value of the Index will always result in a $1 change in the per share Underlying Value of each Down MacroShare.

The impact of changes in the Reference Value of the Index is multiplied by the leverage factor. The ratio of the ending level of the Reference Value of the Index to the starting level of the Reference Value of the Index on the closing date, will yield a settlement factor by which the assets held on deposit by the Down Trust must be multiplied in order to determine the trust's Underlying Value. Before being so applied, this settlement factor is first adjusted by a leverage factor, which is equal to 2. The effect of this is to double any increase in the Underlying Value of the Down Trust as well as to double any decline in that Underlying Value, making the per share Underlying Value and the market price of Down MacroShares potentially more volatile than the housing prices which those shares reference.

The Up MacroShares may be issued only in MacroShares Units consisting of a minimum of 50,000 Up MacroShares issued by the Up Trust and 50,000 Down MacroShares issued by the Down Trust. The Up Trust and Down Trust will issue their Shares in the minimum amounts that constitute a MacroShares Unit on an ongoing basis only to persons who qualify as authorized participants at the per-share Underlying Value of those Shares on the business day on which a creation order for the Shares is delivered to and accepted by MacroMarkets LLC, the administrative agent.[19] The Shares may then be sold by authorized participants to the public at the market price prevailing at the time of any such sale.

The Up MacroShares must be redeemed together with Down MacroShares by any holder who is an authorized participant on any business day in MacroShares Units consisting of a minimum of 50,000 Up MacroShares and 50,000 Down MacroShares, at the respective Underlying Value of those shares, as measured on the applicable redemption date. Unless earlier redeemed on a redemption date or an early termination date, a final distribution will be made on the Up MacroShares on the distribution date occurring in 2018.

The Registration Statements include a number of hypothetical scenarios of circumstances that will impact the Underlying Value of an Up MacroShare and a Down MacroShare.

For more information regarding the Shares, the Trusts, the Reference Value, Income Distribution, Redemption Final Distribution, risks, fees and expenses, Termination Triggers, and creation and redemption procedures, see the Registration Statements.

Availability of Information

At the beginning of each business day, not later than one hour prior to the commencement of trading in the Core Trading Session on the Exchange, the Trustee will calculate the Underlying Value of the Up Trust and the Down Trust and the per share Underlying Value of one Up MacroShare and one Down MacroShare. The Trustee will then provide such values to the administrative agent, who will post them on its Web site located at *http://www.macromarkets.com*. The Trustee will base its calculation of the Underlying Values for any business day on the administrative agent's calculation of the Reference Values for the preceding day (regardless of whether that preceding day is a business day or non-business day), which it will provide to the Trustee. The Underlying Values will be disseminated to all market participants at the same time.

An intraday indicative value will not be disseminated for the Trusts. The Exchange believes that an intraday indicative value for the Trusts would not provide an accurate approximation of the value of Shares of the Trusts. As noted above, the Reference Price, (in the case of the Up MacroShares and Down MacroShares, the Reference Value), is based on the monthly value of the Index. The Exchange believes that the Reference Price applicable to the Trusts, considered together with the current market price of Shares, will provide investors with sufficient information to approximate the amount to be received upon redemption of Shares.

Information regarding market price and volume of the Shares is and will be continually available on a real-time basis throughout the day via electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of major newspapers and will be available from major market data vendors. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association high speed line.

Announcements regarding the levels for the Index and the Indices are made at 9:00 a.m. Eastern Time on the last Tuesday of each month, and are made available to all market participants at the same time. Such levels are available through major market data vendors (*e.g.*, Bloomberg, and Reuters). Press releases are posted at Standard and Poor's Web site at *http://www.indices.standardandpoors.com* and are released to major news services. Historical data regarding the Index and the Indices are published at *http://www.indices.standardandpoors.com*.

The Index and the Indices are disseminated to all market participants at the same time.

Initial and Continued Listing Criteria

Rule 8.400(d) sets forth initial and continued listing criteria applicable to Paired Trust Shares. A minimum of 100,000 Up MacroShares and 100,000 Down MacroShares will be required to be outstanding at the commencement of trading. In addition, the Corporation will obtain a representation on behalf of the Up Trust and the Down Trust that the Underlying Value per share of each Up Share and Down Share, respectively, will be calculated daily and will be made available to all market participants at the same time. The Corporation will remove from listing the Up MacroShares or the Down MacroShares under the circumstances outlined in Rule 8.400(d) for Trading Shares, which include:

- If, after the initial twelve-month period following the commencement of trading of the Shares, (A) the Up Trust or the Down Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Up MacroShares or Down MacroShares, respectively, for 30 or more consecutive trading days; (B) if the Up Trust or the Down Trust has fewer than 50,000 Up MacroShares or Down MacroShares, respectively, issued and outstanding; or (C) if the combined market value of all Shares issued and outstanding for the Up Trust and the Down Trust combined is less than $1,000,000;
- If a replacement benchmark is selected for the determination of the Reference Value, unless the Corporation files with the Commission a related proposed rule change pursuant to Rule

[18] *See* note 9, *supra*.

[19] Authorized participants must also pay a transaction fee of $2,000 for any paired redemption or issuance.

19b–4 under the Exchange Act[20] seeking approval to continue trading the Up MacroShares or Down MacroShares and such rule change is approved by the Commission; or

• If such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

Rule 8.400(d)(2) also provides that the Corporation will halt trading in the Up MacroShares or the Down MacroShares, as the case may be, if the circuit breaker parameters of NYSE Arca Equities Rule 7.12 have been reached. In exercising its discretion to halt or suspend trading in the Up MacroShares or the Down MacroShares, the Corporation may consider other factors that may be relevant.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying securities; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Rule 8.400(d)(2) described above sets forth circumstances under which Shares may be halted.

If the Exchange becomes aware that the Underlying Value per Share of each Up Share and Down Share is not disseminated to all market participants at the same time, it will halt trading in the Up MacroShares or the Down MacroShares, as the case may be, until such time as the Underlying Values per Share are available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative securities products, including Paired Trust Shares, to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members of the ISG.[21]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) what the Shares are; (2) the procedures for purchases and redemptions of Shares in MacroShares Units (and that Shares are not individually redeemable); (3) NYSE Arca Equities Rule 9.2(a),[22] which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (5) trading information.

In addition, the Bulletin will reference that the Shares are subject to various fees and expenses described in the Registration Statements. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under section 6(b)(5)[23] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in NYSE Arca Equities Rule 8.400 are intended to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

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 self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

[20] 20 17 CFR 240.19b–4.

[21] For a list of the current members of ISG, see *http://www.isgportal.org.*

[22] NYSE Arca Equities Rule 9.2(a) provides that an ETP Holder, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that the ETP Holder believes would be useful to make a recommendation. *See* Securities Exchange Act Release No. 54026 (June 21, 2006), 71 FR 36850 (June 28, 2006) (SR–PCX–2005–115).

[23] 15 U.S.C. 78f(b)(5).

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–92 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–92. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–92 and should be submitted on or before September 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21329 Filed 9–12–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58473; File No. SR–NYSEArca–2008–97]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Rule Change by NYSE Arca, Inc. Amending Its Schedule of Fees and Charges for Exchange Services in Order To Establish a New Fee for Electronically Executed Complex Orders

September 8, 2008.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 5, 2008, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self–regulatory organization. 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 its Schedule of Fees and Charges for Exchange Services (''Schedule'') in order to establish certain Transaction Fees.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the existing Schedule in order to create a new fee structure covering electronically executed Complex Orders.[4]

Pursuant to a recent rule filing[5] the Exchange will be introducing automated complex order trading for all market participants on NYSE Arca. In conjunction with this new functionality, the Exchange proposes to introduce two new transaction fees specific to Complex Order executions. Pursuant to this proposal, electronically entered and executed Complex Orders when executed against similar contra-side Complex Orders will be subject to a reduced transaction fee.

Complex Orders that are executed against other similar Complex Orders will be subject to a transaction fee of $0.10 per contract. For example, if a Complex Order, comprised of two legs, executes against a similar two-legged Complex Order, each market participant will be charged $0.20 ($0.10 per contract). To expand on this example, if the same strategy is executed a total of ten (10) times, each participant would be charged $2.00. If a Complex Order comprised of three legs executes against a similar three-legged Complex Order, then each participant would be charged $0.30 for the transaction. To expand on this example, if the same three-legged Complex Order is executed a total of ten (10) times, each participant would be changed $3.00. All electronically executed Complex Orders, regardless of whether they are entered by Market Makers, Brokers Dealers, or OTP Firms representing Public Customers, will be billed this same rate when their order is executed against another Complex Order.

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[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] NYSE Arca Rule 6.62(e) defines a ''Complex Order'' as any order involving the simultaneous purchase and/or sale of two or more different option series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy.

[5] *See* Securities Exchange Act Release No. 58174 (July 16, 2008), 73 FR 42640 (July 22, 2008) (order approving SR–NYSEArca–2008–54, establishing rules pertaining to automated electronic trading of Complex Orders).

The Exchange proposes a separate fee for electronically executed Complex Orders when the same member firm represents both sides of the transaction. Complex Orders, entered by a firm that trade against a similar Complex Order represented by the same firm, will be subject to a transaction fee of $0.05 per contract. For example, if a Complex Order comprised of two legs is entered by Firm A and executes against a similar two-legged Complex Order also for Firm A, the firm will be charged a total of $0.20 (four contracts at $.05 per contract) for each time the complex order strategy is executed. To expand on this example, if the same two-legged Complex Order is executed a total of ten (10) times, the transaction would be subject to a $1.00 fee per Complex Order, and since the same firm is a party to both sides of the transaction, they would be charged a total of $2.00. If a Complex Order entered by Firm A, which is comprised of three legs, executes against a similar three-legged Complex Order entered by Firm A, then the firm would be charged a total of $0.30 for each time the three-legged Complex Order is executed. To expand on this example, if the same three-legged Complex Order is executed a total of ten (10) times, the transaction would be subject to a $1.50 fee per Complex Order, and since the firm represents both sides of the transaction, they would be charged a total of $3.00.

There may be occasions where a Complex Order will not execute against a similar contra-side Complex Order, but instead will execute against the individual leg markets represented by quotes and/or orders in the Consolidated Book. This scenario will occur when the best price for the Complex Order strategy is actually represented by a combination of individual quotes and/or orders, resting in the Consolidated Book. In situations where Complex Orders are executed utilizing two or more individual quotes or orders from the Consolidated Book, standard transaction fees, as shown on the Schedule, will apply to all participants on the trade. For Complex Order transactions in Penny Pilot issues, when the Complex Order is executed against individual quotes and/or orders represented in the Consolidated Book, the Complex Order will be deemed to be taking liquidity from the Consolidated Book and therefore will be subject to the ''Take Liquidity'' rates, as shown on the Schedule.

NYSE Arca plans to implement these fees in conjunction with the planned introduction of the initial phase of automated electronic Complex Order trading on September 15, 2008.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and Section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other market participants on NYSE Arca. [sic] The Exchange believes that the proposed rates are reasonable. The proposed rate structure is part of the Exchange's efforts to attract and enhance participation on the Exchange, with respect to the implementation of electronic complex order trading. The Exchange also believes that the proposed changes to the Fee Schedule are equitable in that they apply uniformly to all market participants on NYSE Arca.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[8] of the Act and subparagraph (f)(2) of Rule 19b–4[9] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca.

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.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2008–97 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–97. 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 will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–97 and should be submitted on or before October 6, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21330 Filed 9–12–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58474; File No. SR–NYSEArca–2008–79]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change To List and Trade ELEMENTS℠ Linked to the CS/RT Emerging Infrastructure Total Return Index Powered by HOLT™ Due 2023

September 8, 2008.

I. Introduction

On July 22, 2008, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade the ELEMENTS™ Linked to the CS/RT Emerging Infrastructure Total Return Index Powered by HOLT™ due 2023. The proposed rule change was published for comment in the **Federal Register** on August 7, 2008.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposed to list and trade the ELEMENTS℠ Linked to the CS/RT Emerging Infrastructure Total Return Index Powered by HOLT™ due 2023 (the ''Notes''), which are linked to the CS/RT Emerging Infrastructure Total Return Index Powered by HOLT™ (U.S. dollar) (the ''Index''), under NYSE Arca Equities Rule 5.2(j)(6), which includes the Exchange's listing standards for Equity Index-Linked Securities.[4] The Notes are senior unsecured debt obligations of Credit Suisse, acting through its Nassau Branch (''Credit Suisse''). The Index is comprised of 50 equally-weighted exchange-listed emerging infrastructure-related companies that are chosen according to a rules-based methodology for scoring stocks (each an ''Index Component'' and, collectively, the ''Index Components''). The Index enables investors to participate in the performance of a selection of companies that have a focus on infrastructure, power and utilities, or agriculture and derive at least 15% of their revenue from the Global Emerging Markets (''GEM''). A GEM is defined as any country except the United States, Canada, Australia, New Zealand, Japan, Hong Kong, Singapore, Austria, Belgium, Luxembourg, Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Spain, Sweden, and the United Kingdom.[5]

The Exchange submitted the proposed rule change because the Index does not meet all of the ''generic'' listing requirements of NYSE Arca Equities Rule 5.2(j)(6) applicable to the listing of Equity Index-Linked Securities. Specifically, the Index meets all such requirements except for those set forth in NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v).[6] The Exchange represented that: (1) Except for NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v), the Notes currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(6) applicable to Equity Index-Linked Securities; (2) the continued listing standards under NYSE Arca Equities Rule 5.2(j)(6) applicable to Equity Index-Linked Securities shall apply to the Notes; and (3) Credit Suisse is required to comply with Rule 10A–3 under the Act[7] for the initial and continued listing of the Notes. In addition, the Exchange represented that the Notes will comply with all other requirements applicable to Equity Index-Linked Securities including, but not limited to, requirements relating to the dissemination of key information such as the Equity Reference Asset value, rules and policies governing the trading of equity securities, trading hours, trading halts, surveillance, firewalls, and Information Bulletins to ETP Holders, as set forth in prior Commission orders approving the generic listing rules applicable to the listing and trading of Index-Linked Securities, generally, and Equity Index-Linked Securities, in particular.[8]

The Exchange stated that, as of April 30, 2008, the market capitalization of the ten largest Index Components accounting for the top 20% of the Index weight was approximately $873.9 billion. The highest weighted stock was Vodafone Group PLC, which accounted for 2% of the Index weight and had a market capitalization of approximately $209.6 billion.

With respect to NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v), which requires that at least 80% of the component stock trade on markets that are members of ISG or parties to comprehensive surveillance sharing agreements with the Exchange, the Exchange represented that it has attempted, but was unable, to enter into comprehensive surveillance sharing agreements with markets on which approximately 36% of the Index Components trade. Specifically, the Exchange does not have comprehensive surveillance sharing agreements with Euronext Amsterdam (2%), Euronext Lisbon (2%), Euronext Paris (6%), JSE Securities Exchange (Johannesburg) (6%), Borsa Italiana (Milan) (4%), Prague Stock Exchange (2%), Bovespa (State of São Paulo Stock Exchange)

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58276 (July 31, 2008), 73 FR 46126.

[4] Equity Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities (''Equity Reference Asset''). *See* NYSE Arca Equities Rule 5.2(j)(6)(i).

[5] The Exchange stated that detailed descriptions of the Notes, the Index (including the methodology used to determine the composition of the Index), fees, redemption procedures and payment at redemption, payment at maturity, taxes, and risk factors relating to the Notes are available in the prospectus or on the Web site for the Notes (*http://www.credit-suisse.com*), as applicable. *See* Credit Suisse's prospectus, as amended, filed pursuant to Rule 424(b)(2) under the Act (File No. 333–132936–14).

[6] NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v) provides that all component securities of the underlying index shall be either (A) securities (other than foreign country securities and American Depository Receipts (''ADRs'')) that are (x) issued by an Act reporting company or by an investment company registered under the Investment Company Act of 1940, which, in each case, are listed on a national securities exchange, and (y) an ''NMS stock'' (as defined in Rule 600 of Regulation NMS) or (B) foreign country securities or ADRs, provided that foreign country securities or foreign country securities underlying ADRs having their primary trading market outside the United States on foreign trading markets that are not members of the Intermarket Surveillance Group (''ISG'') or parties to comprehensive surveillance sharing agreements with the Exchange will not in the aggregate represent more than 20% of the dollar weight of the index. *See* Securities Exchange Act Release No. 58376 (August 18, 2008), 73 FR 49726 (August 22, 2008) (SR–NYSEArca–2008–70) (approving certain amendments to NYSE Arca Equities Rule 5.2(j)(6)(B)(I) and, as a result, renumbering NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(vi) to NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v), among other subsections).

[7] 17 CFR 240.10A–3.

[8] *See, e.g.*, Securities Exchange Act Release Nos. 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR–PCX–2005–63); 56637 (October 10, 2007), 72 FR 58704 (October 16, 2007) (SR–NYSEArca–2007–92); 56838 (November 26, 2007), 72 FR 67774 (November 30, 2007) (SR–NYSEArca–2007–118); 56879 (December 3, 2007), 72 FR 69271 (December 7, 2007) (SR–NYSEArca–2007–110); and 57132 (January 11, 2008), 73 FR 3300 (January 17, 2008) (SR–NYSEArca–2007–125).

(4%), Singapore Stock Exchange (2%), and Bolsa de Madrid (8%), and these markets are not members of ISG.

The Exchange stated that it might be unable to obtain surveillance information from the above-noted exchanges regarding the relevant component stocks, but that it intended to utilize its existing surveillance procedures applicable to derivative products, including Equity Index-Linked Securities, to monitor trading in the Notes. The Exchange represented that such procedures are adequate to properly monitor Exchange trading of the Notes in all trading sessions and to deter and detect violations of Exchange rules. The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange further stated that it may obtain information via ISG from other exchanges who are members of ISG.[9]

Notwithstanding the Notes' inability to meet the requirements of NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v), the Exchange believes that the underlying Index is sufficiently broad-based in scope and, as such, is less susceptible to manipulation: The Index contains 50 companies, listed in 23 countries with no one exchange that is not covered by a comprehensive surveillance sharing agreement listing greater than 8% of such companies. The Exchange added that no one security dominates the underlying Index, thereby serving to protect the public interest and promote capital formation.

III. Discussion and Commission's Findings

After careful review, the Commission finds that NYSE Arca's proposal to list and trade the Notes is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

Although NYSE Arca Equities Rule 5.2(j)(6) permits the Exchange to consider Equity Index-Linked Securities for listing and trading pursuant to Rule 19b–4(e) under the Act,[12] the Notes do not meet all of the generic listing requirements thereunder because the components of the Index do not meet the requirements in NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v).[13] NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v) provides that that all component securities of the underlying index shall be either (A) securities (other than foreign country securities and ADRs) that are (x) issued by an Act reporting company or by an investment company registered under the Investment Company Act of 1940, which, in each case, are listed on a national securities exchange, and (y) an ''NMS stock'' (as defined in Rule 600 of Regulation NMS) or (B) foreign country securities or ADRs, provided that foreign country securities or foreign country securities underlying ADRs having their primary trading market outside the United States on foreign trading markets that are not members of ISG or parties to comprehensive surveillance sharing agreements with the Exchange will not, in the aggregate, represent more than 20% of the dollar weight of the index. According to the Exchange, in the case of the Notes, approximately 36% of the dollar weight of the Index represents Index Components trading on foreign trading markets that are not members of ISG and with which the Exchange has not entered into any comprehensive surveillance sharing agreements.

The Commission notes that the Exchange represents that it has attempted, but has not been able, to enter into comprehensive surveillance sharing agreements with Euronext Amsterdam, Euronext Lisbon, Euronext Paris, JSE Securities Exchange (Johannesburg), Borsa Italiana (Milan), Prague Stock Exchange, Bovespa (State of São Paulo Stock Exchange), Singapore Stock Exchange, and Bolsa de Madrid. The Commission further notes that, in certain limited circumstances, it has approved the listing and trading of derivative securities products based on indices that were composed of stocks for which a national securities exchange has not entered into a comprehensive surveillance sharing agreement with the relevant foreign exchange.[14] The Exchange has represented that it intends to utilize its existing surveillance procedures applicable to derivative products, including Equity Index-Linked Securities, to monitor trading in the Notes and that such procedures are adequate to properly monitor Exchange trading of the Notes in all trading sessions and to deter and detect violations of Exchange rules.

In addition, the Exchange has represented that the Notes will comply with all other requirements applicable to Equity Index-Linked Securities including, but not limited to, requirements relating to the dissemination of key information such as the Equity Reference Asset value, rules and policies governing the trading of equity securities, trading hours, trading halts, surveillance, firewalls, and Information Bulletins to ETP Holders, as set forth in prior Commission orders approving the generic listing rules applicable to the listing and trading of Index-Linked Securities, generally, and Equity Index-Linked Securities, in particular.[15]

The Commission believes that the listing and trading of the Notes is consistent with the Act. The Commission notes that, based on the Exchange's representations, the Notes otherwise meet all of the other applicable generic listing standards under NYSE Arca Equities Rule 5.2(j)(6). The Commission also notes that the Index is composed of securities of 50 companies listed in 23 countries. The Commission further notes that it has previously approved the listing and trading of derivative securities products based on indices that were composed of stocks that did not meet certain quantitative generic listing criteria.[16]

For the foregoing reasons, the Commission believes that the proposal to list and trade the Notes is consistent with the Act and finds good cause for approving the proposed rule change.

[9] For a list of the current members and affiliate members of ISG, *see http://www.isgportal.com.*

[10] 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).

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 240.19b–4(e).

[13] *See supra* note 6 and accompanying text.

[14] *See, e.g.*, Securities Exchange Act Release Nos. 58437 (August 28, 2008), 73 FR 51684 (September 4, 2008) (SR–NYSEArca–2008–77) (approving the listing and trading of exchange-traded notes linked to Barclays Middle East Equities (MSCI GCC)) and 54944 (December 15, 2006), 71 FR 77432 (December 26, 2006) (SR–NYSE–2006–69) (approving the listing and trading of exchange-traded notes linked to the MSCI India Equities Index).

[15] *See supra* note 8 and accompanying text.

[16] *See, e.g.*, Securities Exchange Act Release Nos. 57349 (February 19, 2008), 73 FR 10084 (February 25, 2008) (SR–NYSEArca–2008–22) and 58437 (August 28, 2008), 73 FR 51684 (September 4, 2008) (SR–NYSEArca–2008–77). *See also* Securities Exchange Act Release Nos. 55953 (June 25, 2007), 72 FR 36084 (July 2, 2007) (SR–NYSE–2007–46) and 56695 (October 24, 2007), 72 FR 61413 (October 30, 2007) (SR–NYSEArca–2007–111).

This order is based on the Exchange's representations.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSEArca–2008–79) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21331 Filed 9–12–08; 8:45 am]

BILLING CODE 8010–01–P

[17] 15 U.S.C. 78s(b)(1).

[18] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11411]

Florida Disaster Number FL–00036.

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

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: 09/08/2008.

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: Clay, Flagler, Gulf, Highlands, Martin, Nassau, Palm Beach, Suwannee, Taylor, Volusia.

Contiguous Counties (Economic Injury Loans Only):

Georgia: Camden.

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. E8–21409 Filed 9–12–08; 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 7.

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 08/13/2008.

Effective Date: 09/08/2008.

Physical Loan Application Deadline Date: 09/30/2008.

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 Presidential disaster declaration for the State of Missouri, dated 06/28/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Adair, Callaway, Chariton, Harrison, Macon, Monroe, Putnam.

Contiguous Counties: (Economic Injury Loans Only):

Missouri: Boone, Cole, Howard, Mercer, Osage, Randolph, Saline, Schuyler.

Iowa: Appanoose, Decatur, Ringgold, Wayne.

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. E8–21410 Filed 9–12–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 6361]

30-Day Notice of Proposed Information Collection: DS–7001 and DS–7005, DOS-Sponsored Academic Exchange Program Application, OMB Control No. 1405–0138

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* DOS-sponsored Academic Exchange Program Application.
- *OMB Control Number:* 1405–0138.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs, ECA/A/E/EUR.
- *Form Numbers:* DS–7001, DS–7005.
- *Respondents:* Applicants for the Academic Exchange Program.
- *Estimated Number of Respondents:* 6638.
- *Estimated Number of Responses:* 6638.
- *Average Hours per Response:* 0.75.
- *Total Estimated Burden:* 4978 hours.
- *Frequency:* Annually.
- *Obligation to Respond:* Voluntary.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from September 15, 2008.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- *E-mail: kastrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD-ROM submissions):* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- Fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Carolina Chavez, U.S. Department of State, Bureau of

Educational and Cultural Affairs, Room 246, 301 Fourth Street, SW., Washington, DC 20547, who may be reached on 202–453–8524 or *ChavezCC@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: This collection was formerly entitled Application and Evaluation of DOS-sponsored Academic Exchange Programs. The Department of State collects this information to identify qualified candidates for the Office's academic exchange programs.

Methodology: Applications are delivered physically to the offices of the grantee organization, submitted electronically, or through the mail.

Additional Information: None.

Dated: September 8, 2008.

Thomas Farrell,

Deputy Assistant Secretary for Academic Programs, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E8–21475 Filed 9–12–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6348]

Advisory Committee on International Economic Policy; Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 2 p.m. to 4 p.m. on Monday, September 29, 2008, at the U.S. Department of State, 2201 C Street NW., Room 1107, Washington, DC. The meeting will be hosted by Assistant Secretary of State for Economic, Energy, and Business Affairs Daniel S. Sullivan and Committee Chair Ted Kassinger. The ACIEP serves the U.S. Government in a solely advisory capacity, and provides advice concerning issues and challenges in international economic policy. The meeting will focus on ''Policies, Programs and Total Economic Engagement with China''—with particular emphasis on the geopolitical relationship, post Beijing Olympics, and address the strategic economic dialogue including consumer safety issues and the Bilateral Investment Treaty (BIT) negotiations. An update on the Administration's trade priorities will also be given. Subcommittee reports and discussions will be led by the Strategic Regions Subcommittee and the Economic Sanctions Subcommittee.

This meeting is open to public participation, though seating is limited. Entry to the building is controlled; to obtain pre-clearance for entry, members of the public planning to attend should provide, by Thursday, September 25, their name, professional affiliation, valid government-issued ID number (i.e., U.S. Government ID [agency], U.S. military ID [branch], passport [country], or drivers license [state]), date of birth, and citizenship to Sherry Booth by fax (202) 647–5936, e-mail (*BoothSL@state.gov*), or telephone (202) 647–0847. One of the following forms of valid photo identification will be required for admission to the State Department building: U.S. driver's license, U. S. Government identification card, or any valid passport. Enter the Department of State from the C Street lobby. In view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins.

For additional information, contact Senior Coordinator Nancy Smith-Nissley, Office of Economic Policy Analysis and Public Diplomacy, Bureau of Economic, Energy and Business Affairs, at (202) 647–1682 or *Smith-NissleyN@state.gov.*

Dated: September 8, 2008.

Sandra E. Clark,

Office Director, Office of Economic Policy Analysis and Public Diplomacy, Department of State.

[FR Doc. E8–21477 Filed 9–12–08; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 6349]

Shipping Coordinating Committee; Notice of Subcommittee Meeting

The Shipping Coordinating Committee (SHC), through its Maritime Law Subcommittee, will conduct an open meeting at 11 a.m. on October 14, 2008, in Room 1422 of the United States Coast Guard Headquarters Building, 2100 2nd Street SW., Washington, DC, 20593. The purpose of this meeting is to prepare for the Ninety-fourth Session of the International Maritime Organization's (IMO) Legal Committee (LEG 94) scheduled from 20—24 October 2008 in London.

The provisional LEG 94 agenda calls for the Legal Committee to examine the Provision of financial security, which includes a progress report on the work of the Joint IMO/ILO *Ad Hoc* Expert Working Group on Liability and Compensation regarding claims for Death, Personal Injury and Abandonment of Seafarers. The Committee will also address monitoring the implementation of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention) and development of a possible draft protocol to the Convention. Also on the provisional agenda are the Guidelines on fair treatment of seafarers in the event of a maritime accident, matters arising from the twenty-fourth extraordinary session of the Council, the twenty-fifth regular session of the Assembly, and the hundredth regular session of the Council, and election of officers. Finally, the Committee will review technical cooperation activities related to maritime legislation, and the status of Conventions and other treaty instruments adopted as a result of the work of the Legal Committee, in addition to allotting time to address any other issues that may arise on the Committee's work program.

Members of the public are invited to attend the SHC meeting up to the seating capacity of the room. To facilitate the building security process, those who plan to attend should call or send an e-mail two days before the meeting. Upon request, participating by phone may be an option. For further information please contact Captain Charles Michel or Lieutenant Amber Ward, at U.S. Coast Guard, Office of Maritime and International Law (CG–0941), 2100 Second Street, SW., Washington, DC 20593–0001; e-mail *Amber.S.Ward@uscg.mil,* telephone (202) 372–3794; fax (202) 372–3972.

Dated: September 9, 2008.

Mark Skolnicki,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E8–21476 Filed 9–12–08; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending August 29, 2008

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2008–0262.

Date Filed: August 27, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 17, 2008.

Description: Application of Aguadilla Airline Services, Inc. requesting authority to engage in scheduled passenger operations as a commuter air carrier.

Docket Number: DOT–OST–2006–24922.

Date Filed: August 29, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 19, 2008.

Description: Amendment of Jetstar Airway Pty. Limited to its application for a foreign air carrier permit adding authority to engage in: (i) Foreign scheduled and charter air transportation of persons, property and mail from points behind Australia via Australia and intermediate points to a point or points in the United States and beyond; (ii) foreign scheduled and charter transportation of property between any point or points in the United States and any other point or points; (iii) other charters pursuant to the prior approval requirements set forth in the Department's regulations governing charters.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E8–21434 Filed 9–12–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending August 29, 2008

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2008–0268.

Date Filed: August 29, 2008.

Parties: Members of the International Air Transport Association.

Subject:

Mail Vote 004/08 and 005/08.
Cargo Tariff Coordinating Conference.
Composite Meeting, (Memo 0618).
Intended effective date: 1 October 2008.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E8–21435 Filed 9–12–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Seventy-Seventh Meeting, RTCA Special Committee 159: Global Positioning System (GPS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 159 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Global Positioning System (GPS).

DATES: The meeting will be held September 29–October 3, 2008, from 9 a.m. to 4:30 p.m. (unless stated otherwise).

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 meeting. The plenary agenda will include:

- Sept. 29: Monday
  - All Day, Working Group 2, GPS/WAAS, Colson Board Room.
  - All Day, Working Group 2C, GPS/Inertial, Macintosh-NBAA Room & Hilton-ATA Room.
- Sept. 30: Tuesday
  - All Day, Working Group 2B, GPSLI, Only MOPS Colson Board Room.
  - All Day, Working Group Precision Landing Guidance (GPS/LAAS), Macintosh-NBAA Room & Hilton-ATA Room.
- Oct. 1: Wednesday
  - All Day, Working Group 4, Precision Landing Guidance (GPS/LAAS), Macintosh-NBAA Room & Hilton-ATA Room.
- Oct. 2: Thursday
  - All Day, Working Group 4, Precision Landing Guidance (GPS/LAAS), Maclntosh-NBAA Room & Hilton-AlA Room.
- Oct. 3: Friday
  - Open Plenary (Chairman's Introductory Remarks, Approval of Summary of the Seventy-Sixth Meeting held April 18, 2008, RTCA Paper No. 20408/SC159–967).
  - Review Working Group (WG) Progress and Identify Issues for Resolution.
  - GPS/3 Civil Frequency (WG–1).
  - GPS/WAAS (WG–2).
  - GPS/GLONASS (WG–2A).
  - GPS/L1 Only MOPS (WG–2B).
  - GPS/Inertial (WG–2C).
  - GPS/Precision Landing Guidance and (WG–4).
  - GPS/Airport Surface Surveillance (WG–5).
  - GPS/Interference (WG–6).
  - GPS/Antennas (WG–7).
  - GPS/GRAS (WG–8).
  - Review of EUROCAE activities.
  - Consider for Approval, Revised DO–253B—Minimum Operational Performance Standards for GPS Local Area Augmentation System Airborne Equipment, RTCA Paper No. 202–08/SC 159–965.
  - Consider for Approval, Revised DO–246C—GNSS Based Precision Approach Local Area Augmentation System (LAAS), RTCA Paper No. 203–08/SC 159–966.
  - Closing Plenary Session (Assignment/Review of Future Work, Other Business, Date and Place of Next Meeting).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public

may present a written statement to the committee at any time.

Issued in Washington, DC, on September 2, 2008.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E8–21172 Filed 9–12–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Forty-Sixth Meeting, RTCA Special Committee 186: Automatic Dependent Surveillance-Broadcast (ADS–B)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 186 Automatic Dependent Surveillance Broadcast (ADS–B) meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 186 Automatic Dependent Surveillance Broadcast (ADS–B).

DATES: The meeting will be held September 22–25, 2008, at 9 a.m. (Unless Otherwise Noted).

ADDRESSES: The meeting will be held at RTCA Conference Rooms, 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036, (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 186 meeting. The agenda will include:

- Sept. 22: Monday
  - All Day, Working Group 1, ATSA SURF IA, Colson Board Room.
  - All Day, Requirements Focus Group (RFG), Maclntosh-NBAA Room & Hilton ATA Room.
- Sept. 23: Tuesday
  - All Day, Working Group 1, ATSA SURF IA, Colson Board Room.
  - All Day, Requirements Focus Group (RFG), Maclntosh-NBAA Room & Hilton ATA Room.
  - All Day, Ad Hoc—CDII Symbology, ARINC Room.
- April 24: Wednesday
  - All Day, Working Group 1, ATSA SURF IA, ARINC Room.
  - All Day, Requirements Focus Group (RFG). Maclntosh-NBAA Room & Hilton ATA Room.
  - All Day, Ad Hoc—CDII Symbology, Garmin Room.
  - All Day, Working Group 4, Colson Board Room.
- Sept. 25: Thursday
  - Open Plenary (Chairman's Introductory Remarks, Review Meeting Agenda, Review/Approval of the Forty-Fifth Meeting Summary, RICA Paper No. 207 08/SC 186–266, Date, Place, and Time of Next Meeting).
  - FAA Surveillance and Broadcast Services (SBS) Program—Status.
  - Review of EUROCAE WG–51 Activities.
  - Working Group Reports.
  - WG–1—Operations and Implementation.
  - WG–2—TIS–B MASPS.
  - WG–3—1090 MHz MOPS.
  - WG–4—Applications Technical Requirements.
  - WG–5—UAT MOPS.
  - RFG—Requirements Focus Group.
  - Ad Hock Reports.
  - CDTI Symbology.
  - TIS–B Service Status.
  - Consider for Approval—New Document—*Safety, Performance and Interoperability Requirements Document for Enhanced Visual Separation on Approach* (ATSA–VSA), RTCA Paper No. 190–08/SC 186–265.
  - Closing Plenary Session (New/Other Business, Review Actions Items/Work Program, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 2, 2008.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E8–21189 Filed 9–12–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice, Key West International Airport, Key West, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by Monroe County for Key West International Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is August 27, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Lindy McDowell, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, 407–812–6331 extension 130.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the Noise Exposure Maps submitted for Key West International Airport are in compliance with applicable requirements of Federal Aviation Regulation (FAR) Part 150, effective August 27, 2008. Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (the Act), an airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of FAR Part 150, promulgated pursuant to the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the airport operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the Noise Exposure Maps and accompanying documentation submitted by Monroe County. The documentation that constitutes the ''Noise Exposure Maps'' as defined in Section 150.7 of FAR Part 150 includes: Table 4.2–1, 2008 Air Carrier & Air Taxi Operations; 4.2–2, Air Carrier & Air Taxi Flight Track Utilization; Table 4.2–3, 2008 Average Daily Engine Run-up Operations; Table 4.2–4, 2008 General Aviation Operations; Table 4.2–5, General Aviation Flight Track Utilization; Table 4.2–6, 2008 Military Aircraft Operations; Table 4.2–7, Military Flight Track Utilization; Table 4.2–8, Summary of 2008 Flight Operations; Table 4.3–1, 2008 Existing Condition Noise Exposure Estimates;

Figure 4.1, East Flow Radar Tracks; Figure 4.2, West Flow Radar Tracks; Figure 4.3, East Flow Flight Tracks; Figure 4.4, West Flow Flight Tracks; Figure 4.5, Touch and Go and Helicopter Flight Tracks; Figure 4.6, Run-up Locations; Figure 4.7, 2008 Existing Condition Noise Exposure Map; Table 5.2–1, 2013 Air Carrier & Air Taxi Operations; Table 5.2–2, 2013 Average Daily Engine Run-up Operations; Table 5.2–3, 2013 General Aviation Operations; Table 5.2–4, 2013 Military Aircraft Operations; Table 5.2–5, Summary of 2013 Flight Operations; Table 5.3–1, 2013 Future Condition Noise Exposure Estimates; Figure 5.1, 2013 Future Condition Noise Exposure Map; and, Figure 5.2, Future Condition Noise Exposure Map with Flight Tracks. The FAA has determined that these Noise Exposure Maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on August 27, 2008.

FAA's determination on the airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the airport operator's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that Program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map submitted under Section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise exposure contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under FAR Part 150 or through FAA's review of Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 47503 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the full Noise Exposure Maps documentation and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Orlando, Florida on August 27, 2008.

William E. Farris,

Acting Manager, Orlando Airports District Office.

[FR Doc. E8–21185 Filed 9–12–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Mobile Regional Airport, Mobile, AL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed amendment to the Noise Compatibility Program that was submitted for Mobile Regional Airport under the provisions of 49 U.S.C. 47504 *et seq.* (the Aviation Safety and Noise Abatement Act hereinafter referred to as ''the Act'') and 14 CFR Part 150 by the Mobile Airport Authority. This program was submitted subsequent to a determination by FAA that the associated Noise Exposure Maps submitted under 14 CFR Part 150 for Mobile Regional Airport were in compliance with applicable requirements effective May 1, 2006, and was published in the **Federal Register** on May 18, 2006. The proposed amendment to the Noise Compatibility Program will be approved or disapproved on or before February 21, 2009.

DATES: *Effective Date:* The effective date of the start of FAA's review of the amendment to the noise compatibility program is August 29, 2008. The public comment period ends October 29, 2008.

FOR FURTHER INFORMATION CONTACT: William Schuller, Federal Aviation Administration, Jackson Airports District Office, 100 West Cross Street, Jackson, Mississippi 39208, 601 664–9883. Comments on the proposed amendment to the noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed amendment to the Noise Compatibility Program for Mobile Regional Airport which will be approved or disapproved on or before February 21, 2009. This notice also announces the availability of this amendment for public review and comment.

An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA previously approved the Noise Compatability Program for Mobile Regional Airport. The FAA has formally received the amendment to the Noise Compatibility Program for Mobile Regional Airport, effective on August 29, 2008. The airport operator has requested that the FAA review this material and that the amended noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as part of the Noise Compatibility Program under section 47504 of the Act. Preliminary review of the submitted material indicates that the amendment conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before February 21, 2009.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety or create an undue burden on interstate or foreign commerce, and whether they are reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program amendment with specific reference to

these factors. All comments relating to these factors, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the Noise Exposure Maps, the FM's evaluation of the maps, and the proposed amendment to the Noise Compatibility Program are available for examination at the following locations: Federal Aviation Administration, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, Mississippi 39208.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Jackson, Mississippi on August 29, 2008.

Rans Black,

Manager, Jackson Airports District Office.

[FR Doc. E8–21187 Filed 9–12–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Announcement of Project Selections for FY 2008 Clean Fuels Grant Program Discretionary Funds

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: The U.S. Department of Transportation (DOT) Federal Transit Administration (FTA) announces the discretionary selection of projects that will be funded using the unallocated Fiscal Year (FY) 2008 Clean Fuels Grant program funds.

FOR FURTHER INFORMATION CONTACT: The appropriate FTA Regional Administrator for grant-specific issues (see Appendix A); or Kimberly Sledge, Office of Program Management, 202–366–2053, for general information about the Clean Fuels Grant program.

SUPPLEMENTARY INFORMATION:

Clean Fuels Grant Program

A total of $28,753,000 million was available for discretionary allocation under the Clean Fuels Grant program in FY 2008. FTA published a notice of funding availability (NOFA) on May 22, 2008, inviting proposals for funding under the program. The proposals that were submitted addressed a number of FTA priorities under the program, such as: Replacement of vehicles that had met their useful life, fleet expansion to improve service, and construction of clean fuels related facilities to support alternative fuel vehicles. FTA received proposals totaling over $350 million in response to the NOFA.

In its evaluation of proposals, FTA considered the criteria specified in the NOFA as well as the productivity and efficiency of transit systems which applied for funding. FTA recognizes that there is an on-going need for critical investment in clean fuel vehicles and the facilities to support new technologies. FTA is awarding facility projects a considerable portion of the amount requested because grantees often do not receive enough funds to complete a facility project in one award. Projects selected for funding are shown in Table 1, which accompanies this announcement. The funding announced in this notice will be available for obligation until September 30, 2010.

James S. Simpson,

Administrator.

FEDERAL TRANSIT ADMINISTRATION

TABLE 1

FISCAL YEAR 2008 DISCRETIONARY SECTION 5308 CLEAN FUELS PROGRAM ALLOCATIONS

State	Earmark ID	Project and Project Recipient	Allocation
California	D2008-CLNF-001	Alameda-Contra Costa Transit District (AC Transit) - Facility	4,000,000
California	D2008-CLNF-002	Los Angeles County Metropolitan Transportation Authority (LACMTA) - Facility	5,500,000
Georgia	D2008-CLNF-003	Metropolitan Atlanta Rapid Transit Authority (MARTA) - Facility	4,000,000
Michigan	D2008-CLNF-004	Capital Area Transportation Authority (CATA) - Vehicles	1,000,000
New York	D2008-CLNF-005	Metropolitan Suburban Bus Authority (MTA Long Island Bus) - Vehicles	3,293,000
New York	D2008-CLNF-006	Niagara Frontier Transportation Authority (NFTA) - Vehicles	2,520,000
Pennsylvania	D2008-CLNF-007	Pennsylvania DOT for Centre Area Transportation Authority (CATA) - Vehicles	540,000
Pennsylvania	D2008-CLNF-008	Southeastern Pennsylvania Transportation Authority (SEPTA) - Vehicles	3,000,000
Virginia	D2008-CLNF-009	Hampton Roads Transit (HRT)- Facility	2,700,000
Washington	D2008-CLNF-010	King County Department of Transportation - Metro Transit Division - Vehicles	2,200,000
Total Allocation			**$28,753,000**

Appendix A—FTA Regional Offices

Region I—Massachusetts, Rhode Island, Connecticut, New Hampshire, Vermont and Maine

Richard H. Doyle, FTA Regional Administrator, Volpe National Transportation Systems Center, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, (617) 494–2055.

Region II—New York and New Jersey

Brigid Hynes-Cherin, FTA Regional Administrator, One Bowling Green, Room 429, New York, NY 10004–1415, (212) 668–2170.

Region III—Pennsylvania, Maryland, Virginia, West Virginia, Delaware and Washington, DC

Letitia Thompson, FTA Regional Administrator, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, (215) 656–7100.

Region IV—Georgia, North Carolina, South Carolina, Florida, Mississippi, Tennessee, Kentucky, Alabama, Puerto Rico and the Virgin Islands

Yvette G. Taylor, FTA Regional Administrator, 230 Peachtree St., NW., Suite 800, Atlanta, GA 30303, (404) 865–5600.

Region V—Illinois, Indiana, Ohio, Wisconsin, Minnesota and Michigan

Marisol R. Simon, FTA Regional Administrator, 200 West Adams Street, Suite 320, Chicago, IL 60606–5232, (312) 353–2789.

Region VI—Texas, New Mexico, Louisiana, Arkansas and Oklahoma

Robert C. Patrick, FTA Regional Administrator, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, (817) 978–0550.

Region VII—Iowa, Nebraska, Kansas and Missouri

Mokhtee Ahmad, FTA Regional Administrator, 901 Locust Street, Suite 404, Kansas City, MO 64106, (816) 329–3920.

Region VIII—Colorado, North Dakota, South Dakota, Montana, Wyoming and Utah

Terry Rosapep, FTA Regional Administrator, 12300 West Dakota Avenue, Suite 310, Lakewood, CO 80228–2583, (720) 963–3300.

Region IX—California, Arizona, Nevada, Hawaii, American Samoa, Guam and the Northern Mariana Islands

Leslie T. Rogers, FTA Regional Administrator, 201 Mission Street, Suite 1650, San Francisco, CA 94105–1831, (415) 744–3133.

Region X—Washington, Oregon, Idaho, Alaska

Richard Krochalis, FTA Regional Administrator, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, (206) 220–7954.

[FR Doc. E8–21074 Filed 9–12–08; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35152]

Arkansas Midland Railroad Company, Inc.—Operation Exemption—in Jacksonville, AR

Arkansas Midland Railroad Company, Inc. (AKMD),[1] a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to operate approximately 2.6 miles of rail line in Jacksonville, AR (the Jacksonville Industrial Spur), extending from the wye track connections with Union Pacific Railroad Company's (UP) Little Rock-Poplar Bluff main line near South James Street to General Samuels Road near the south side of the Little Rock Air Force Base. The Jacksonville Industrial Spur is owned by the City of Jacksonville (City) and is currently operated by UP as exempt spur trackage. AKMD and the City have entered into a lease agreement providing for AKMD's lease of, and provision of rail service on, the line. UP's exempt switching operations will terminate upon AKMD's initiation of service.

AKMD certifies that its projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier. Because the projected annual revenues of the line, together with AKMD's projected annual revenue, will exceed $5 million, AKMD certified on July 3, 2008, that on that date it served the national offices of the labor unions with employees on the line with a copy of a notice of its intent to undertake this transaction, and posted such notice on July 3, 2008, at the workplace of the employees on the affected line.

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

The transaction is expected to be consummated on October 1, 2008.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than September 19, 2008.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35152, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Litwiler, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 9, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–21393 Filed 9–12–08; 8:45 am]

BILLING CODE 4915–01–P

[1] AKMD is a wholly owned subsidiary of Pinsly Railroad Company, Inc., a non-carrier holding company which also controls four other Class III rail carriers in Florida and Massachusetts. *See Pinsly Railroad Company—Continuance in Control Exemption—Arkansas Midland Railroad Company, Inc.*, Finance Docket No. 32001 (ICC served Mar. 6, 1992).

Federal Register

Monday,
September 15, 2008

Part II

Postal Regulatory Commission

39 CFR Parts 3001 and 3050
Periodic Reporting Rules; Proposed Rule

POSTAL REGULATORY COMMISSION

39 CFR Parts 3001 and 3050

[Docket No. RM2008–4; Order No. 104]

Periodic Reporting Rules

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing a set of rules to address a continuing and expanded need, under a new law, for periodic reports from the Postal Service. The proposal describes the scope of reporting and the level of detail the Commission believes is needed to provide accountability and transparency with respect to Postal Service operations. Comments will assist the Commission in developing a final set of reporting rules.

DATES: Initial comments due October 16, 2008. Reply comments due November 14, 2008.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3198 (2006), calls for a fundamental shift of responsibilities between the Postal Service and the Postal Regulatory Commission (Commission) from those established in the Postal Reorganization Act (PRA). Under the PAEA, the Postal Service has acquired considerable autonomy and flexibility in determining what specific rates and discounts will be charged for mail products. Concurrently, the Commission's information gathering and reporting responsibilities have been greatly enhanced. This is consistent with a dominant theme in the PAEA that increasing the transparency of the Postal Service's pricing, classification, and service policies will reduce the need to actively regulate the Postal Service in these areas.

II. Statutory Duties That Shape the Proposed Periodic Reporting Requirements

Perhaps the most important tools provided by the PAEA for achieving the transparency on which the new statutory scheme relies are the annual report that 39 U.S.C. 3652 requires the Postal Service to provide to the Commission (which this Notice will refer to as the ''Annual Report''); the annual evaluation of the regulatory system that 39 U.S.C. 3651 requires the Commission to provide to Congress and the President; and the requirement of 39 U.S.C. 3653 that the Commission determine whether the Postal Service has met the rate setting, service, and other goals of the PAEA during the preceding fiscal year (which this Notice will refer to as the ''Annual Compliance Determination''). In addition, the PAEA requires the Commission to prepare longer-term reports and assessments such as those required by sections 701 and 702 of the PAEA, to elicit various managerial reports such as those required by 39 U.S.C. 2803 and 2804, and to oversee specialized financial reporting such as that required by 39 U.S.C. 3654. The periodic reporting rules proposed in this Notice are designed to implement all of the PAEA's provisions that make the Postal Service's operations and finances transparent and accountable. Accordingly, the general terms ''periodic reports'' and ''annual reports'' are used in this Notice unless the information elicited serves only the purposes of the Annual Compliance Determination that the Commission must make under 39 U.S.C. 3653.

A. Statutory Standards Guiding the Annual Review Cycle

The annual compliance report that 39 U.S.C. 3652 requires the Postal Service to provide to the Commission is intended to contain the source material for the Commission's annual compliance determination of the degree to which postal rates and service comply with he requirements, objectives, and factors of the PAEA. The Postal Service's compliance report is to include an analysis of the costs, revenues, rates, and quality of service ''in sufficient detail to demonstrate that all products during such year complied with all applicable requirements of this title[.]'' 39 U.S.C. 3652(a)(1). The Postal Service's compliance report to the Commission is required to demonstrate the extent to which both market dominant and competitive products recover their attributable costs and contribute to institutional costs. *See* 39 U.S.C. 3622(b)(9), 3622(c)(2), 3633(a)(2), and 3633(a)(3). The Postal Service's annual compliance report must also allow the service quality of market dominant products to be identified and evaluated. *See* 39 U.S.C. 3622(b)(3), 3622(c)(9), and 3691.

Similar information is needed with regard to the Postal Service's competitive products. 39 U.S.C. 3622(b)(9) and 3633(a)(3) require the Commission to determine an appropriate contribution for the competitive classes as a whole to the Postal Service's institutional costs. This determination is applied to future years. Such determinations must take into account ''all relevant circumstances, including the prevailing competitive conditions in the market.'' *See* 39 U.S.C. 3633(b).

There are additional reasons that the Commission needs to be able to evaluate the present and the future as well as the past. 39 U.S.C. 3651 requires the Commission each year to evaluate the effectiveness of the regulatory system that it has constructed to implement the PAEA. This report is to include an evaluation of ''the extent to which regulations are achieving the objectives under sections 3622 and 3633, respectively.'' Thus, the Commission is required to assess the degree to which the Postal Service's management of both market dominant and competitive products is consistent with the objectives of the new statutory scheme. The Commission notes that 39 U.S.C. 3651 asks the Commission to evaluate the extent to which its regulations ''are achieving'' their statutory objectives, rather than the extent to which they ''have achieved'' them. This implies that the Commission is expected to base its evaluation on current as well as historical conditions. The Commission must also estimate the costs that the Postal Service is incurring to comply with its public service mandate and the statutory preferences that are preserved in the PAEA. *See* 39 U.S.C. 3651(b)(1)(A) and (B).

39 U.S.C. 3654 requires the Postal Service to submit quarterly and annual financial reports to the Commission that meet the requirements that corporations issuing publicly registered securities must meet in their financial reporting to the Securities Exchange Commission, including the requirements of the Sarbanes-Oxley Act of 2002. The Commission proposes to incorporate the reporting requirements of 39 U.S.C. 3654 into the periodic reporting rules under consideration in this docket. *See* proposed §§ 39 CFR 3050.40 through 3050.42.

B. Longer-Term Evaluation Responsibilities

In addition to annual reporting obligations, the Commission is required to undertake evaluations of the functioning of the regulatory system it has implemented under the PAEA on longer-than-annual cycles. 39 U.S.C. 3633(b), already mentioned, requires the Commission every 5 years to re-evaluate

the need for the requirement that the Postal Service's competitive products make an institutional cost contribution determined by the Commission. Section 701 of the PAEA requires the Commission, at least every 5 years, to re-evaluate the appropriateness of its regulatory framework, and recommend any needed modifications to the President and Congress. Section 702 requires the Commission, within 2 years of enactment of the PAEA, to report to the President and Congress on the scope and standards of universal service and the postal monopoly likely to be required in the future. To adequately prepare for these longer-cycle reviews, the Commission will need forward looking as well as historical information to stay abreast of developments in the Postal Service's finances and operations. The Commission needs a sound knowledge base from which it can evaluate the Postal Service's commercial and financial prospects.

Under the PAEA, the Commission has a continuing obligation to advise the Department of State on international mail matters. The Department of State has the lead responsibility for negotiating treaties that affect rates charged for market dominant international mail. 39 U.S.C. 407(c) assigns to the Commission an ongoing responsibility to provide the Secretary of State with its views on whether rates and classifications in an international treaty are consistent with the standards and criteria established by the Commission under the PAEA. This new statutory role affirms the Commission's need for current, detailed information concerning international mail. Accordingly, under the proposed rules, the Postal Service would provide the cost, volume, revenue, and weight of outbound and inbound international market dominant products, disaggregated by rate regime and country. It would also provide as yet unspecified service performance data in proposed 39 CFR 3050.52.

III. Comparing the Periodic Reporting Required Under the PAEA With That Required Under the PRA

A. The Impact of Changes in Commission Responsibilities

Under the PRA, the most burdensome filing requirements were those associated with specific rate requests. These requirements, contained in 39 CFR 3001 Subparts B and C are no longer applicable and have been replaced by far more spare requirements. *See* 39 CFR 3010.14 and 3015.5, adopted in Order No. 43, October 29, 2007 [See 72 FR 63662, November 9, 20007].

In contrast, the evaluation and reporting duties given the Commission by the PAEA require periodic reports from the Postal Service that are broader in scope than the Commission's current periodic reporting rules, which were designed to support the Commission's functions under the PRA. Currently, the form and content of information that the Postal Service must report periodically to the Commission is governed by 39 CFR 3001.102. Rule 102 requires that the Postal Service provide the Commission with financial accounting data by year and by accounting period, data on volumes and revenues by year and by quarter, and annual cost estimates by function (segment and component) and by subclass of mail. Rule 102 requires the Postal Service to provide the Commission with its annual Cost and Revenue Analysis (CRA) Report and its Cost Segments and Components (CSC) Report. Rule 103 requires the equivalent reports with respect to international mail.

Rule 102 reports were needed to enable the former Postal Rate Commission to perform its duties defined by the PRA. Chief among them was its duty to process the Postal Service's omnibus rate requests in an expedited manner while still satisfying the formal ''on the record'' hearing requirements of sections 556 and 557 of the Administrative Procedure Act (APA). This required the former Postal Rate Commission to have an ongoing familiarity with the financial condition of the Postal Service, its cost, volume, and revenue trends, and the evolving methods by which the Postal Service gathered and analyzed cost data and attributed costs to subclasses.

Under the PAEA, the need for the Commission to stay abreast of such developments is even greater. While it no longer has to use cumbersome trial-type procedures to evaluate proposed rate changes, the scope of its various review functions is comprehensive, and many must be completed in a very short time frame.

B. Scope of Periodic Reports Under Current and Former Law

1. Worksharing

An important difference between the periodic reporting required of the Postal Service under the PRA and that which will be required under the PAEA relates to the costs and revenues associated with worksharing. For example, under the PRA, rule 102 did not require the Postal Service to annually report the costs avoided by worksharing for the relevant rate categories. The Commission required such information only in conjunction with omnibus requests to change rates and discounts. The PAEA, however, expressly requires the Commission to ''ensure that [workshare] discounts do not exceed the cost that the Postal Service avoids as a result of workshare activity'' unless justified on the basis of other identified benefits of worksharing activity. *See* 39 U.S.C. 3622(e). The information necessary to make this determination must be included in the Postal Service's annual compliance report.

Proposed rule 3050.21(e)(4) directs the Postal Service to provide and explain the statutory justification for worksharing discounts that exceed 100 percent of the associated cost avoidance. The intent of this rule is to provide the Commission and interested parties with the information necessary to determine, for each such discount, exactly which statutory exemption the Postal Service is invoking and the basis for the claim that the exemption applies to it.

Rule 3010.14(b)(6) serves a similar function for market dominant rate adjustment filings. In the first filing of this type (Docket No. R2008–1), the Commission found it necessary to issue a Commission Information Request seeking clarification to ''allow assessment of conformity of the discounted rates with the criteria in the Postal Accountability and Enhancement Act[.]'' Commission Information Request No. 1, February 26, 2008 at 1 (CIR No. 1). In response, the Postal Service identified the exemption it was claiming for each discount and elaborated upon its reasons for concluding that each discount satisfied the requirements of the exemption. Response of the United States Postal Service to Commission Information Request No. 1, March 4, 2008 (Response to CIR No. 1). The experience in that case should help provide guidance as to the extent of explanation and support that is anticipated to be provided to satisfy rules 3010.14(b)(6) and 3050.21(e)(4).

2. Negotiated Service Agreements

Under the PRA, the Commission did not have standing rules requiring the periodic reporting of information specific to negotiated service agreements (NSAs). The PAEA requires an annual Commission determination as to whether NSAs ''improve the net financial position of the Postal Service.'' *See* 39 U.S.C. 3622(c)(10). 39 U.S.C. 3633(a)(2) requires that each competitive product cover its attributable costs. Since the Commission views NSAs as distinct products, a

contribution analysis is required of competitive NSAs as well. Accordingly, the Postal Service's Annual Report should provide an estimate of the impact that each NSA had on total contribution for the fiscal year covered by its annual report. Under the proposed rules, therefore, the Annual Report should include sufficient information about the costs, volumes, and revenues associated with such agreements to enable the Commission to verify the Postal Service's estimate.

Proposed rule 3050.21(f)(4) directs the Postal Service to provide an analysis of each market dominant NSA that shows the effect of the agreement on the net financial position of the Postal Service. As with other quantitative estimates, rule 3050.21(f)(4) requires that the estimates be developed using accepted analytical principles.

For most areas of analysis, the current methodological baseline is the set of analytical principles applied by the Commission in Docket No. R2006–1 and affirmed in the Commission's FY 2007 Annual Compliance Determination (2007 ACD). The financial effects of NSAs, however, were not litigated in Docket No. R2006–1. The Commission did not formulate generally applicable principles for determining their net financial effect until its 2007 ACD, which established the analytical principle that the financial impact of price incentives to increase mail volume or to shift mail volume between products should be based on the Postal Service's best estimate of the price elasticity of the discounted product. 2007 ACD at 127.

The application of this principle will vary based on the specific terms and characteristics of each NSA, but its essence is the use of price elasticities to isolate the effect of rate incentives from other factors that affect volume. This analytical principle was first articulated by the Commission in its Opinion and Further Recommended Decision in Docket No. MC2004–3 at paras. 5011–38. Its purpose is to apply the terms of an agreement to the specific characteristics of the NSA partner's eligible mail (*e.g.*, unit revenues, unit costs, and price elasticities). The Commission recognizes that econometrically modeling the price elasticity of volumes sent by an individual mailer might not always be feasible. Accordingly, with the appropriate justification and explanation, reasonable proxies may be used for this and other mailer-specific traits that are not otherwise obtainable.[1]

The characteristics of the NSAs filed with the Commission to date make them impractical to analyze for their impact on contribution for the fiscal year. This is because each NSA so far has included discount incentives that are awarded based on their performance during each 12-month period that the agreement is in effect. Therefore, unless an NSA's implementation date coincides with the beginning of the fiscal year, it is impractical to evaluate the effect of the discounts for that fiscal year.

The Commission's proposed rules recognize this difficulty. Accordingly, they would require the Postal Service to select the anniversary of an NSA's operation that falls within the fiscal year covered by the Postal Service's annual compliance report, look back 12 months from that point, and estimate the NSA's contribution to the Postal Service's total institutional costs. *See* proposed rule 3050.21(f)(4).

3. The General Role of Elasticity of Demand

Under the PRA, rule 102 did not require the Postal Service to provide information about the price elasticity of demand for postal products. The PAEA, however, requires that ''information'' on mail volumes be provided for market dominant products. *See* 39 U.S.C. 3652(2)(A). Further, many of the objectives and factors that the PAEA directs the Commission to consider in establishing a regulatory system for market dominant products involve value of service considerations, either explicitly (*see* 39 U.S.C. 3622(c)(1) and 39 U.S.C. 3622(c)(8)), or implicitly (*see* 39 U.S.C. 3622(c)(3) and 39 U.S.C. 3622(c)(4)). The most objective evidence of a product's value of service is its price elasticity of demand. Accordingly, demand elasticities provide useful guides for evaluating how well these factors have been recognized in rates. Knowledge of price elasticities of demand is also essential for evaluating the impact of rates on allocative efficiency. Allocative efficiency is a goal embodied in 39 U.S.C. 3622(b)(1) and 39 U.S.C. 3622(b)(5).

The PAEA requires the Commission to ensure that the institutional costs of the Postal Service are allocated appropriately between market dominant and competitive products. *See* 39 U.S.C. 3622(b)(9) and 39 U.S.C. 3633(a)(3). Doing so in a way that takes allocative efficiency into account requires the Commission to have knowledge of the relative price elasticities of both market dominant and competitive products.[2] Elasticities of demand are also needed to evaluate volume forecasts for new products or new rate structures in connection with section 3622(d)(1)(C) proceedings, including a determination of whether NSAs ''improve the net financial position of the Postal Service.'' *See* 39 U.S.C. 3622(c)(10).

Accordingly, proposed rule 3050.26 would require the Postal Service to provide estimates of the elasticity of demand for all postal products for which adequate data can be obtained. The underlying econometric model of demand elasticity and input dataset are to be provided as well. The Postal Service would be required to update the model annually.

4. Appropriate Share of Attributable and Institutional Costs

The PAEA requires that the Commission determine whether a competitive product covers its attributable costs. This requirement extends to NSAs that involve competitive products, both domestic and international. *See* 39 U.S.C. 3633(a)(2). In addition, 39 U.S.C. 3622(b)(9) and 39 U.S.C. 3633(a)(3) require that the Commission determine whether competitive products collectively bear a minimum share of institutional costs that the Commission determines to be appropriate. To make an informed determination for competitive products as a group, it would be necessary to analyze factors that affect the institutional cost contributions of individual products.[3] This requires knowledge of the attributable costs, volumes, and revenues associated with competitive

[1] For example, the lack of available mailer-specific elasticities led the Commission to use subclass-average elasticities for Standard Mail to generate its estimates in the 2007 ACD. *See* 2007 ACD at 127–30.

[2] The Postal Service and Parcel Shippers Association (PSA) have urged the Commission to consider the market positions of the Postal Service's various competitive products when it determines what a reasonable institutional cost contribution for those products would be under section 3633(a). *See* Docket No. RM2007–1, Reply Comments of the United States Postal Service, May 7, 2007, at 27–28. PSA agrees that important evidence of the market position of competitive products is provided by their price elasticities of demand, citing the Postal Service's estimates of the own-price elasticity and the cross-price elasticity of Priority Mail and Parcel Post. Docket No. RM2007–1, Comments of Parcel Shippers Association in Response to Commission Order Proposing Regulations, September 24, 2007, at 3–4.

[3] PSA contended in a previous docket that if the Commission is to determine an appropriate contribution for competitive products as a whole, it must understand the role played by individual competitive products. It points out that over 80 percent of the total contribution of competitive products comes from just two products—Priority Mail and Express Mail. Docket No. RM2007–1, Comments of the Parcel Shippers Association in Response to the Commission's Order Proposing Regulations, September 24, 2007, at 3–4.

products, including the portion associated with NSAs.

5. Service Performance

Section 3691 of the PAEA requires the Postal Service, in consultation with the Commission, to establish and maintain a set of service standards for market dominant products. The section provides explicit statutory objectives for the service standards adopted, and requires a service performance measurement system in which the Commission plays a role. It also authorizes complaints under 39 U.S.C. 3662 and 39 U.S.C. 3663 for violations of the regulations that implement these service standards and performance measurement systems.

The Commission is deferring consideration of data reporting on service quality. Proposed rules 3050.50 through 3050.53 are ultimately intended to describe the service performance information that would be required to implement the relevant provisions of the PAEA. When evaluation of the service performance measurement system currently under review in Docket No. PI2008–1 is complete, the Commission intends to solicit public comment on what data concerning levels of achievement of relevant service standards should be incorporated in rules 3050.50 through 3050.53.

6. Incremental Costs

39 U.S.C. 3633(a)(1) prohibits the subsidy of competitive products by market dominant products. In Docket No. RM2007–1, the Commission addressed this issue and determined that incremental costs would be used to test for cross-subsidies of competitive products by market dominant products. *See* 39 CFR 3015.7(a). Accordingly, proposed rule 3050.23 would require the Postal Service to provide estimates of incremental costs. The underlying incremental cost model, the input dataset, and processing programs would be required as well. At a minimum, the Postal Service must provide a model of the incremental costs of competitive products as a group. The Postal Service should have as a goal the development of a model of incremental costs for individual market dominant products to help identify cross-subsidy of one market dominant product by another.

7. Universal Service Obligation

Under 39 U.S.C. 3651, the Commission must annually report to the President and Congress assessing the performance of the regulatory system that it has implemented under the PAEA. The Commission is required to include in that report an estimate of the costs incurred by the Postal Service in meeting its legally mandated public service obligations. The Commission is specifically required to estimate the cost of the geographic dimension of universal service and the cost of preferred rates. *See* 39 U.S.C. 3651(b)(1)(A) and (B). Under 39 U.S.C. 3651(c), the Postal Service is obligated to provide such information as the Commission, in its judgment, considers necessary to prepare its report.

The Commission is currently developing analyses to inform its estimate of the costs incurred by the Postal Service in meeting its legally mandated public service obligation. 39 U.S.C. 3651(b)(1)(A) identifies a potential geographic component to that obligations. It directs the Commission to estimate the costs that the Postal Service incurs serving the ''rural areas, communities, and small towns where post offices are not self-sustaining'' referenced in 39 U.S.C. 101(b). Accordingly, the Commission needs to be able to analyze whether the geographic distribution of the Postal Service's delivery offices, delivery routes, and retail counter facilities incurs costs that would not be incurred by a private provider without public service obligations.

To provide the Commission with data from which the geographic variance in delivery costs and customer access costs could be estimated, the proposed rules would require that the Postal Service's Annual Report provide data sufficient to calculate the costs incurred and the revenue derived from each route sampled by the City Carrier Cost System (CCCS) and the Rural Carrier Cost System (RCCS). The identity of the carrier route, type, its associated processing facility, and ZIP Code should be provided. At present, such information would include, for each sampled route, the carrier costs and the volume of mail delivered, by product (or ''bucket'' of products). The ultimate objective would be to identify the actual direct and indirect costs associated with each route in the sample.[4] Rule 3050.30 also proposes that the Postal Service provide revenues generated and the costs incurred by each retail counter facility in a representative sample of such facilities. The applicable ZIP Code should be included. These information requirements will be re-evaluated in light of the results of the currently ongoing universal service obligation studies required by section 702 of the PAEA.

[4] Developing these data might be most efficiently achieved by linking the relevant databases, or by modifying the CCCS data collection protocol.

IV. Confidential Treatment of Periodic Reports

39 CFR Part 3007, proposed in Docket No. RM2008–1, would implement the provisions of the PAEA that generally authorize the Postal Service to designate information in the periodic reports that it provides to the Commission as confidential within the meaning of 5 U.S.C. 552(b) or as commercially sensitive within the meaning of 39 U.S.C. 410(c). *See* 39 U.S.C. 3654(f). Proposed part 3007 [in Docket No. RM2008–1] would resolve the issue of what information so designated, if any, would be made public.

Consistent with section 504(g) of the PAEA, under that rule, the issue of public disclosure would be addressed by a process analogous to the process prescribed in rule 26(c) of the Federal Rules of Civil Procedure. Rather than treat any category of information as commercially sensitive *per se,* the Commission would balance the potential harm to the Postal Service's commercial interests against the need of stakeholders and the public to know how the Postal Service is discharging its duties as a monopoly imbued with a public trust. It is also anticipated that flexible remedies provided for by rule 26(c), such as the imposition of protective conditions or selective redaction of documents, would be available under the Commission's confidentiality rules.

V. Content of the Postal Service's Periodic Data Reports Under the PAEA

A. The Cost and Revenue Report and the Cost Segments and Components Report

The Commission's proposed rules would require the Postal Service to provide summaries of cost, volume, and revenue data in its annual report, primarily to comply with 39 U.S.C. 3652. These would consist of the CRA and the CSC reports, presenting costs, volumes, and revenues by market dominant product and by competitive product. They would include a separate line item for each market dominant international product and each competitive international product in the Mail Classification Schedule.

B. Format of Documentation Supporting the CRA and CSC Reports

Supporting documentation for the CRA and the CSC reports should present costs, volumes, and revenues as defined in the current Mail Classification Schedule, and by each product's

constituent rate categories. At least for the first several years under the PAEA, the Commission proposes that the Postal Service's annual report present this information in an alternative format as well. This format would present costs, volumes, and revenues by product and rate category, reflecting the classification structure that was in effect immediately prior to the implementation of the PAEA. *See* proposed rule 3050.14. This is illustrated by the appendix appendix to this Notice [and Order] labeled ''Products and Categories.'' This disaggregated format would provide the Commission and the interested public with ''building blocks'' that are suitable for multiple purposes. The alternative format would allow the CRA data to be configured to coincide with the current Mail Classification Schedule, and, with modest effort, almost any foreseeable future modification of that schedule. At the same time, it would allow the CRA data to be configured to coincide with the historical classification structure. This should help ensure analytical consistency over time and across categories. It would facilitate historical continuity in financial reporting, and give the Commission and the interested public the ability to track trends in the financial data and make it easier to identify and analyze anomalies, should they appear. Presenting disaggregated data in this historical format will provide a particularly helpful reference point if the product lists under the PAEA undergo frequent refinement in the first few years of the new regulatory regime. The Commission recognizes that there may be obstacles, such as inadequate volume, that make it impractical to separately estimate attributable costs for some rate categories. For such rate categories, the Postal Service should include volume and revenue figures, where available, and provide a footnote in the attributable cost column explaining the reasons that separate attributable costs could not be estimated, or a suitable proxy could not be found.

C. Information Required for International Mail

1. Level of Disaggregation

Since disaggregated cost, volume, and revenue data on international mail would be integrated into the CRA and CSC reports for the first time under the proposed reporting rule, a discussion of the information required for international products will be helpful.

The proposed rules would require the Postal Service to provide volumes, revenues, costs, weight, and data on outbound and inbound international mail. *See* proposed rules 3050.22(d)(8) through (11). Cost, volume, and revenue data would be broken out by product, as defined in the current Mail Classification Schedule, and by each product's constituent rate categories. Supporting documentation should also present costs, volumes, and revenues in the alternative, more disaggregated format illustrated in the appendix to this Notice labeled ''Products and Categories.'' [5] For outbound and inbound international First-Class Mail, data would be reported separately by terminal dues regime (''target countries,'' ''transition countries,'' and bi-lateral agreements). The underlying country-specific data are to be provided in back-up documentation. This will allow the Commission to determine whether revenues cover costs at this level of disaggregation.

The required reporting on international products will be more complex under the PAEA than it was under the PRA, due primarily to the need to identify all international services as either market dominant or competitive. Some international services will have both market dominant and competitive components, depending upon whether they are outbound or inbound, surface or air, single-piece or bulk, and whether the rates charged are UPU rates or non-UPU rates. Inbound Parcel Post data, for example, should be shown separately for the category subject to UPU rates, and for those categories whose rates were negotiated bilaterally.

2. Ancillary International Services

The current draft Mail Classification Schedule treats Ancillary Services for international mail categories as a single product. The Commission notes that defining these services in aggregate as a ''product'' is a decision that might warrant further examination. Its component services are so heterogeneous as to raise questions about the validity of treating them as a coherent product with common cost or demand characteristics. The regulatory scheme that the Commission has implemented under the PAEA will work best if each defined product has cost or demand characteristics that can be meaningfully quantified. In pursuit of this goal, International Ancillary Services might need to be organized into smaller, more homogenous groupings. In the alternative format required by proposed rule 3050.14, these Ancillary Services would be disaggregated. One of the benefits of the alternative format is that it would facilitate analysis of alternative treatments of Ancillary Services.

3. Treatment of Fees Associated With International Mail

The treatment of fees associated with international mail categories in the current draft Mail Classification Schedule might warrant further examination as well. The current draft Mail Classification Schedule treats them as free-standing products. Where no identifiable attributable cost is associated with a fee-based service feature, its costs are likely to be reflected in the host product's attributable costs. To balance revenues with costs, it may be more appropriate to group such fees with their host product than to treat them as free-standing products. The disaggregated format illustrated in the appendix to this Notice would facilitate analysis of alternative treatments of fees associated with international products.

The current draft Mail Classification Schedule separates international Special Services into market dominant and competitive categories, but it associates all domestic Special Services with the market dominant group, even though some domestic Special Services are purchased and used in conjunction with competitive products.[6] It may be more appropriate to separate domestic Special Services into competitive and market dominant categories. Although there may be more rational ways to group data for Ancillary Services and for Special Services, doing so is likely to require changes to the Mail Classification Schedule.[7]

D. Preferred Rate Mail

The Commission proposes that the CRA and the CSC reports filed annually by the Postal Service show separate volumes and revenues for each category of preferred-rate mail (*e.g.*, Standard Regular Nonprofit, Standard ECR Nonprofit, Outside County Nonprofit, Outside County Classroom, Library), even if that category is not defined as a separate ''product.'' *See* 39 U.S.C. 3626. This would allow the Commission to

[5] Most of these data are to be developed quarterly, but provided annually. This will enable the Commission to analyze data by fiscal year for the purpose of the annual compliance report, and by calendar year, which aligns with Universal Postal Union (UPU) rate cycles.

[6] In Docket No. R2008–1, the first rate adjustment under price cap regulation, the Postal Service treated all special services and fees (domestic and international, market dominant and competitive) as one market dominant class of mail called ''Special Services.''

[7] If these classification refinements were made, they would have to be accomplished through amendments to the Mail Classification Schedule.

comply with the requirement in section 3651(b)(1)(B) of the PAEA that it estimate the ''cost'' (which the Commission interprets to mean the revenue foregone by) of offering preferred rates as a component of the cost of the universal service obligation.

E. Brief Narrative Explanation

The Commission proposes that the Postal Service provide, by July 1 of each year, a succinct description of the analytical principles that have been used to arrive at the estimates in the most recent ACD and the reasons that those principles have been accepted. The summary level of description and explanation would be equivalent to that which the Postal Service traditionally provided with respect to attributable costs in Library Reference 1 in the final omnibus rate case processed under the PRA, Docket No. R2006–1. These short descriptions of principles and reasons should be provided for all areas of analysis, including cost attribution, cost avoidance, demand analysis, and service performance measurement. This requirement is found in proposed rule 3050.60(f). Proposed rule 3050.13 would require the Postal Service, at the time that it files its Annual Report, to identify and describe any changes in the analytical principles that have been accepted since the most recent ACD, and the rationale supporting each change.

F. Supporting Documentation Required When Analytical Principles or Quantification Techniques Have Changed

Beyond the basic data summaries and the brief explanation of methods required by proposed rules 3050.22 through 3050.26, no supporting documentation in the Postal Service's Annual Report would be required unless the input data, quantification techniques, or analytical principles applied have changed since the most recent ACD was issued.[8] If input data, quantification techniques, or analytical principles have changed, the new data and a description of the changes to quantification techniques must accompany the report. *See* proposed rules 3050.2 and 3050.13. As will be described in more detail below, changed analytical principles will have to have been approved in advance by the Commission in a rulemaking proceeding designed for that purpose and documented as part of that rulemaking.

Proposed rules 3050.22 through 3050.26 list the information items that would be required to be included in the annual report if all of the items listed were to have changed since the relevant baseline. As noted above, under normal circumstances, the relevant methodological baseline would be the methods accepted by the Commission in its most recent ACD.

Because the proposed periodic reporting rules are designed to require the Postal Service to provide supporting detail only where quantification techniques or analytical principles have changed with respect to the baseline, they would eliminate the redundant documentation that was often presented in an omnibus rate case under the procedures of the PRA.[9]

G. More Frequent Periodic Reports

As with current rule 102, the proposed periodic reporting rule requires the Postal Service to provide certain reports on a more frequent than annual basis. Most of the more frequently reported items support the Postal Service's Annual Report. They would assist the Commission in performing its duty under 39 U.S.C. 3653 to annually produce a determination on the extent to which the rates and fees charged and the service provided by the Postal Service in the reporting year complied with the provisions of chapter 36 of title 39 [of the U.S. Code]. Due to the short time 39 U.S.C. 3653 allows the Commission to produce its compliance determination, it is necessary for the Commission to stay as current as possible on the financial and operating performance of the Postal Service as the reporting year unfolds. More frequent reporting of some items will also enhance transparency and accountability by helping mailers determine whether there are likely to be grounds for filing a complaint under 39 U.S.C. 3662. Accordingly, under the proposed rules, items such as the Postal Service's Revenue and Expense Summaries Report and the National Consolidated Trial Balances will be required after the close of each fiscal month.

Revenue Pieces and Weight (RPW) reports, Quarterly Statistics Reports, and billing determinants would be required after the close of each fiscal quarter. *See* proposed rule 3050.25. These quarterly reports are needed to help the Commission prepare its annual report under 39 U.S.C. 3651 which evaluates how the system embodied in its regulations is working. In particular, quarterly volume and revenue data would help the Commission evaluate how well its price cap regulations are working by allowing it to construct hybrid evaluation years that better align price and classification changes with their volume and revenue effects. Quarterly data on volumes and revenues also will be needed if the Postal Service files a request for rate or classification changes outside the normal annual cycle.

H. Postal Service Compliance Analysis

39 U.S.C. 3652(a)(1) states that the Postal Service shall provide the Commission with a report

> which shall analyze costs, revenues, rates, and quality of service, * * * in sufficient detail to demonstrate that all products during such year complied with all applicable requirements of this title[.]

This language requires the Postal Service's report to *analyze* the data it provides in sufficient detail to demonstrate that all of its products (market dominant and competitive) complied with all of the requirements of title 39 [of the U.S. Code]. The Postal Service, therefore, is to provide a compliance analysis with its Annual Report that is both broad in scope—covering all requirements of title 39—and specific to each product. Proposed rule 3050.20 implements the analysis requirement of 39 U.S.C. 3652(a)(1).

VI. Level of Detail Required in the Postal Service's Annual Report

In most instances where the PAEA requires the Commission to produce reports or evaluations, the PAEA directs the Postal Service to provide the Commission with the information that the Commission considers necessary to prepare the reports required. *See* 39 U.S.C. 3651(c), 3652(d), 3651(e)(2), and 3654(e). In order to determine whether the rates and service that the Postal Service implements complied with the standards of the PAEA, the Commission believes that the information that the Postal Service includes in its Annual Report must be supported by workpapers at a level of detail that is comparable to the documentation that existing rule 54 would have required to support the initial filing in an omnibus rate case under the PRA. The proposed rules would require, for example, that the Postal Service provide the ''B'' workpapers, which show the

[8] These terms are defined in proposed rule 3050.1.

[9] Under the formal hearing procedures of the PRA, an omnibus rate case would typically be treated as a trial *de novo,* in which the Postal Service would present witnesses supporting all essential aspects of its case—even those that had not changed since they were last litigated—and intervenors would challenge elements of the Postal Service case, even where the Commission had approved them in previous litigation. The result was that a good deal of documentation provided in omnibus rate hearings was redundant of prior omnibus rate hearings.

distribution of directly attributable costs by cost segment and component.[10]

The proposed rule would require that estimates that were developed using electronic spreadsheets be supported with those spreadsheets, and that those spreadsheets display the formulas used and their links to related spreadsheets. As in current rule 54, the proposed rule would require that documentation be provided in a form that can be read by publicly available PC software. It would also require that if a processing program were developed specifically to produce an accompanying workpaper, it would have to be provided in a form that could be executed by publicly available PC software. *See* proposed rule 3050.2.

Unlike an omnibus rate case, the Postal Service would not have to document analytical principles used in its annual compliance report to the Commission with testimony. If the Postal Service seeks to change the analytical principles that it used in its most recent annual report provided under the PAEA, the proposed rules would require it to justify the change in an informal rulemaking prior to filing its annual report.

VII. Analytical Principles To Be Applied in the Postal Service's Annual Report

39 U.S.C. 3652(e) requires the Commission to ''prescribe the content and form of the public reports * * * to be provided by the Postal Service under this section.'' The proposed rules would distinguish between data entry and manipulation techniques whose validity depends on specific ''analytical principles'' and those that do not. An analytical principle is a conceptual or theoretical approach approved by the Commission for collecting data, attributing costs to subclasses, or estimating a product's avoided cost, elasticity of demand, or average revenue.[11] Under the proposed rule, the Postal Service's Annual Reports would employ ''accepted analytical principles''—principles that the Commission applied in its most recent ACD, to estimate volumes, revenues, attributable costs, and avoided costs.[12] The most recently completed ACD would serve as the methodological baseline for the subsequent Annual Report unless the Postal Service had obtained prior approval from the Commission to change the analytical principles that it employs.

A proposal to change an accepted analytical principle would require an informal rulemaking to evaluate the proposal, and an acceptance of the proposal by the Commission. *See* proposed rule 3050.11. Under normal circumstances, this process would have to be completed and a final rule published in the **Federal Register** at least 30 days in advance of the filing of the Annual Report. *See* 5 U.S.C. 553(d). If the Postal Service's Annual Report corrects calculations in the most recent ACD, or changes the quantification techniques used to make those calculations, the Postal Service must accompany its compliance report with a list of such changes and a brief explanation of each. *See* proposed rule 3050.2.

A. The Distinction Between ''Analytical Principles'' and Other Elements of Analyses Supporting the Annual Compliance Report

Under the proposed rules, changes in accepted analytical principles must be reviewed and accepted by the Commission in advance. In contrast, correcting an error or changing a quantification technique used in the baseline methodology would only require notice and a brief explanation at the time that an annual compliance report is filed with the Commission. *See* proposed rule 3050.2. Updating data used in a baseline methodology would require no justification, if done in a neutral and balanced way.

The following guidelines illustrate the distinction between a change in an accepted analytical principle and less significant changes requiring simpler procedures, such as an update of input data, a correction, or a change in quantification technique.

1. Updates

Plugging more recently collected data into an otherwise unchanged model or analysis is neither a change in quantification technique nor a change in the analytical principles applied.

2. Corrections

Correcting a spreadsheet that misidentifies a row or column, or applies a formula to the wrong cell, would not be a change in quantification technique nor a change in the analytical principle applied.

3. Quantification Techniques

Examples of changes to quantification techniques include consolidating multiple spreadsheets into one, using spreadsheet figures that are linked rather than hardcoded, changing mainframe SAS to PC SAS, and changing from database management software from Access to Oracle. Such changes should not change the concept, theory, assumptions, or results of an analysis.

4. Data Collection

Changing the sample frame, sample size, sampling technique, or definition of a data element used as input data in an analysis would constitute a change to an analytical principle. For example, the changes made by the Postal Service in its Management Operating Data System (MODS) by discontinuing weighing of mail to obtain an estimate of First Handled Pieces, and changes made after FY 2007 in the City Carrier Cost System discontinuing the collection of stop- and route-type information would constitute changes in baseline analytical principles. Each of these changes have potentially major impacts on any analysis of mail processing or carrier street time cost causation.

Changing the definition of a data element to reflect changes in operations, however, would not constitute a change to an analytical principle. For example, if the Postal Service were to forbid mailers to enter mail in sacks for operational reasons, it could discontinue collecting data on the use of sacks as a container type for purposes of determining the subclass distribution of variable mail processing costs for mixed mail without review of the change in an informal rulemaking.

5. Analysis

Changing a data editing technique, economic assumption, functional form, model specification, or regression evaluation technique would constitute a change in an analytical principle. Similarly, changing a formula used in a spreadsheet analysis would constitute a

[10] It is important to distinguish the range of information items that would be required in the annual report from the level of detail that would be required in those various items. The range of items that the Postal Service would have to document in its annual report under the proposed rules is likely to be considerably more narrow than if it were filing an omnibus rate request under the PRA, since it would be limited to data and analyses that have changed relative to the baseline.

[11] The technical definition of ''analytical principle'' is found in proposed rule 3050.1(b): ''a particular economic, mathematical, or statistical theory, precept, or assumption applied by the Postal Service in producing a periodic report to the Commission.'' Any data entry or manipulation technique whose validity does not depend on the acceptance of a particular economic, mathematical, or statistical theory, precept, or assumption is a mere ''quantification technique.'' *See* proposed rule 3050.1.

[12] The technical definition of ''accepted analytical principle'' is an ''analytical principle applied by the Commission in its most recent Annual Compliance Determination, unless different analytical principles have been accepted by the Commission in a final rule that becomes effective prior to the filing of the Postal Service's Annual Report.'' *See* proposed rule 3050.1.

change in an analytical principle. Using a more recent measure of an input used in a volume variability model (such as an updated deliveries-per-stop or deliveries-per-square mile in a street time variability model) would not.

Similarly, if the Postal Service wanted to update its purchased transportation cost variability study by updating its calculation of average cubic foot miles or average length of haul for various transportation segments without changing the form or specification of the underlying econometric model, it would not constitute a change in an established analytical principle, and would not require review in a rulemaking.

Updating an estimated price elasticity for a given mail product by using (in a consistent manner) more recent DRI forecasts for various macroeconomic control variables already present in an accepted econometric model of demand would not constitute a change in an accepted analytical principle, and would not require review in a rulemaking.

6. Cost Avoidance

Changing the classification of cost pools, or the rate categories used as benchmarks or proxies, would constitute a change in accepted analytical principles.

7. Special Studies

A special study that follows a reviewed and approved design would not constitute a change in analytical principles if it were used to update such things as:

- MODS machine productivities;
- Accept rates;
- Productive hourly wage rates;
- Premium pay factors;
- Operation-specific piggyback factors;
- Entry profiles; and
- Shape breakouts of unit attributable costs.

However, special studies must be reviewed and accepted in an informal rulemaking if they use data collection or analytical methods that were not accepted by the Commission in its most recent Annual Compliance Determination.

B. Procedures for Changing Analytical Principles Used To Collect and Analyze Data in the Postal Service's Annual Report

The PAEA lodges with the Commission ultimate responsibility for selecting appropriate input data and analytical methods to be used in the Postal Service's Annual Report. *See* 39 U.S.C. 3652(e). Accordingly, the Commission's proposed reporting rules would be more prescriptive than the current rules with respect to the data and methods that underlie the Postal Service's Annual Report. 39 U.S.C. 3652(e)(2) provides that the Commission may ''on its own motion or on request of an interested party, initiate proceedings * * * to improve the quality, accuracy, or completeness of Postal Service data required by the Commission under this subsection * * * .'' Selecting the analytical principles to be used in accounting for costs, revenues, or volumes falls within the definition of a ''rule'' for purposes of the APA. *See* 5 U.S.C. 551(4). Therefore, the procedures that the Commission proposes for changing Commission-approved methods for collecting and analyzing data of this kind are those of an informal rulemaking under section 553 of the APA.

The Commission believes that one of the important benefits of the PAEA is the freedom that it gives the postal community to decide analytical issues in a non-adversarial context. Under the PRA, analytical issues were decided employing a litigation model. Under that model, the Commission was required to resolve an analytical issue by accepting or rejecting competing analyses submitted by opposing witnesses. In some instances, the Commission would cobble together a solution from analytical elements proffered by rival witnesses. In almost all cases, analyses were presented as *faits accomplis*, with no opportunity for input or feedback from either the Commission or interested third parties. The process was cumbersome and the results were often less than satisfactory.

Under the PAEA, the Commission expects that the Postal Service will continue to take the lead in deciding how data about its finances, operations, and performance will be collected and analyzed. But because analytical issues can be addressed in the context of informal rulemakings under the PAEA, an opportunity for input and feedback from other stakeholders and the Commission can be provided. The Commission proposes to take advantage of that opportunity by approaching analytical issues through a process that promotes cooperation and facilitates consensus.

39 U.S.C. 3652(e)(2) authorizes the Commission to initiate proceedings designed to improve the data in the Postal Service's annual reports ''on its own motion or at the request of an interested party.'' In keeping with the intent of 39 U.S.C. 3652(e)(2), a proposal to change accepted analytical principles may be submitted by the Commission, the Postal Service, or other interested parties.

The Commission will exercise its discretion in deciding whether a proposal to change accepted analytical principles justifies the initiation of a rulemaking, based on a consideration of the potential benefits to the quality of the information available to the postal community and the time and resources likely to be expended in the inquiry. If the proposal presents a persuasive argument that a change in accepted analytical principles is needed, the Commission will initiate a docket by publishing a notice of proceeding in the **Federal Register** and on the Commission's Web site.

The procedures proposed are highly flexible, and would vary according to the complexity of the proposed change and the level of documentation supporting it. The Commission expects that, for the most part, proposals to change established analytical principles will be data intensive and technically oriented. It believes that review of such proposals can be done more quickly and efficiently if they emphasize informal ''discovery'' procedures at the initial stages, where clarification of technical issues is often needed, and reserve more formal written commentary for later stages.

C. Nature of Rulemakings That Review Analytical Principles Used To Prepare Periodic Reports

The metrics by which the Postal Service's compliance with the PAEA is determined depend, importantly, on the analytical principles that the Postal Service uses to prepare its periodic reports to the Commission. As noted, the analytical principles used in the Commission's most recent ACD would serve as the methodological baseline.[13] These would be changed through the informal rulemaking procedures prescribed by section 553 of the APA. Such rulemakings are likely to take different forms, as circumstances require. Examples of the forms they could take are discussed below. All of these forms could be accommodated by the generic procedures provided for in proposed rule 3050.11.

1. Strategic Rulemakings

A strategic rulemaking would be designed to make the ongoing development of analysis in cost causation or other areas of analysis as orderly and efficient as possible. It would take an inventory of longer-term

[13] Currently, in most respects, these coincide with the set of analytical principles used in the most recent omnibus rate case brought under the PRA (Docket No. R2006–1).

data collection and analysis needs. It is likely to involve plans to meet those needs over a horizon longer than a year. It might focus on existing data collection systems that need to be improved or new data collection programs that need to be established. It might list existing analytical studies that need to be updated, or new analytical studies that need to be undertaken. The scope of a strategic rulemaking would be broad, since one of its purposes would be to compare the likely cost and benefits of improved data or analysis in different areas of research, and the lead time required to conduct the research. The purpose would be to prioritize research projects and draw up a tentative schedule for conducting them.

A strategic rulemaking is likely to be general in focus and exploratory in nature in its early stages. Accordingly, the procedures followed would be quite flexible. They might begin with the equivalent of a prehearing conference in which interested parties identify areas in which research is most needed and most likely to bear fruit. Once a strategic rulemaking has identified and prioritized areas of needed research, it would then narrow its focus to specific data to be gathered or studies to be performed. The Notice of Proposed Rulemaking would be expected to culminate in Commission approval of a list of research projects to be undertaken and a preliminary projected time table for their completion.

2. Discrete Issue Rulemakings

Discrete issue rulemakings would address the data requirements, analytical methods, and timetable to be followed in researching a single analytical issue or closely-related set of issues. At this stage, specific research projects are likely to be proposed in the form of specific tasks, and the merits of the projects discussed. Initially, this discussion is likely to take place in the context of informal technical conferences. When the goals and methods to be employed by proposed research projects have been well-defined, their merits may be discussed in written comments in response to a notice of proposed rulemaking. An example would be a rulemaking addressing needed corrections and improvements to the Commission's Docket No. R2006–1 Periodicals cost model, which were examined in a preliminary way in Docket No. ACR 2007. In the system being proposed, the need for a study of these issues, its feasibility, and its priority, would ordinarily have been identified in an earlier strategic rulemaking.

The timetable for the study would be determined by its scope and complexity. The process might begin with a written proposal by the proponent of the study to focus evaluation of the study by others. The Commission might then give its preliminary approval of the study plan, and keep the rulemaking docket open to receive progress reports, and evaluate interim results. A final rule would issue when the Commission accepts one or more new analytical principles.

3. Expedited Rulemakings

Expedited rulemakings would be designed to identify and make needed improvements in the data and methods that the Postal Service uses to produce its most recent Annual Report. Although they could be initiated by the Commission or an interested person, in most instances, it is anticipated that the Postal Service would take the initiative to harmonize its methods and analysis with those approved in the Commission's most recent annual compliance determination. This kind of rulemaking would focus on near-term improvements to data and analysis that could be made in time to be incorporated in the Postal Service's next Annual Report. The relatively narrow window of time available for completing a compliance-oriented rulemaking is likely to limit such rulemakings to studies that are modest in scope and straightforward to implement. Where expedition requires it, discovery may take the form primarily of oral questions answered in real time, such as informal technical conferences.

D. Form and Content of a Proposal To Change an Analytical Principle

At a minimum, a proposal should identify the established principle that needs to be reviewed, explain its perceived deficiencies, and suggest how those deficiencies might be remedied. If a proposal offers a specific alternative method of collecting or analyzing data, it should include the data, analysis, and documentation on which it is based. While an estimate of the impact of the proposed change on the estimated attributable cost, avoided cost, elasticity of demand, average revenue, or service attainment of affected postal products would not be mandatory, such an estimate would improve the likelihood that the Commission will treat the proposal as ready for a final round of comment and possible adoption.

The Commission's response to a proposal would depend on the circumstances—for example, how specific and concrete the proposed alternative principle is, and the level of documentation accompanying it. If the Commission concludes that the proposal makes a persuasive argument that a change in an accepted analytical principle would be beneficial and therefore is suitable for review, it would establish a review docket. Having opened a review docket, the Commission could ask the proponent to provide additional clarification of its criticism of the established principle, or to provide supporting documentation for its proposed alternative. The Commission could also ask for a written response from the Postal Service or the interested public.

If the Commission considered such preliminary steps unnecessary but perceived a need to clarify the basis for the proponent's criticism of the accepted principle, to clarify the basis of its proposed alternative, or to clarify what relevant data are available, the Commission could ask the proponent of the change to provide one or more sponsoring analysts to respond to questions from the Commission's technical staff, the Public Representative, and interested parties in a technical conference format.

Depending on the circumstance, the format of a technical conference may be informal, where no transcript would be kept, or formal, where a detailed agenda would be followed and a transcript kept. The former might be more suitable where the focus is on the availability of relevant data. The latter might be more suitable where expert opinion is sought as well. Even where the Postal Service is not the proponent of a change in an accepted analytical principle, the Commission might ask it to provide one or more experts on the subject matter of a proposal in a technical conference format concerning the merits of the proposal or to explain what data and analyses are available or could be made available to investigate the proposed alternative. The Commission may also arrange for a panel of outside experts to provide written statements, participate in a technical conference, or give depositions, at any stage of discovery where such assistance would be helpful.

If the Commission were to determine that a proposal is well defined, adequately documented, and ready for final evaluation, it would publish a notice of proposed rulemaking and seek final written comments from interested parties. Until such a notice is issued, the proposed rules allow the Commission broad discretion in selecting appropriate procedures to follow on a case-by-case basis.

The intent of proposed rule 3050.11 is to resolve all issues raised by proposed changes in analytical principles

efficiently, well in advance of the filing of the Postal Service's Annual Report. This should streamline the processing of the Postal Service's report when it is received. Proposed rule 3050.11 does not impose a particular lead time on the petitioning for or completing a proceeding to change an accepted analytical proceeding. As a practical matter, however, if complex or controversial changes to established analytical principles are proposed, they would need to be started well in advance of the due date of the Annual Report if the goal is to use them in the report.

VIII. Section-by-Section Analysis of Proposed Rules

Proposed rule 3050.1 provides definitions for key terms used in the proposed regulations.

Proposed rule 3050.2 sets forth general standards for documenting the Postal Service's periodic reports to the Commission.

Proposed rule 3050.3 defines the scope and terms of Commission access to information in the custody of the Postal Service and its Inspector General.

Proposed rule 3050.10 requires the Postal Service to use analytical principles that are accepted by the Commission to prepare an annual report to the Commission.

Proposed rule 3050.11 sets forth the procedures by which changes to accepted analytical principles may be adopted.

Proposed rule 3050.12 requires the Postal Service to indicate whether each special study relied on in its annual report to the Commission is current and valid, is in the process of being updated, or should be excused from the requirement that it be current and valid.

Proposed rule 3050.13 requires the Postal Service to include in its annual report to the Commission a brief narrative that describes any changes that have been made to accepted analytical principles since the Commission's most recent Annual Compliance Determination was issued, and the rationale for making the change.

Proposed rule 3050.14 requires the Postal Service to present its Cost and Revenue Analysis report in a format that corresponds to the classification structure in the current Mail Classification Schedule, and in an alternative, more disaggregated format that can be used to reformat the results to match the classification structure that was in effect immediately prior to the adoption of the Postal Accountability and Enhancement Act.

Proposed rule 3050.20 requires the Postal Service's annual report to the Commission to analyze the degree to which its products met the policies of title 39 of the United States Code.

Proposed rule 3050.21 prescribes specific categories of data to be included in (the content of) the Postal Service's annual report to the Commission.

Proposed rule 3050.22 prescribes the documentation required to support the attributable cost estimates in the Postal Service's annual report.

Proposed rule 3050.23 requires the Postal Service to accompany its annual report with a documented model of incremental costs.

Proposed rule 3050.24 prescribes the documentation required to support the avoidable cost estimates in the Postal Service's annual report.

Proposed rule 3050.25 requires the Postal Service, each quarter, to provide the Commission with its RPW report, its Quarterly Statistics Report and billing determinants. It also requires the Postal Service to accompany its annual report with the annual version of the RPW report.

Proposed rule 3050.26 requires the Postal Service, by January 20 of each year, to provide the Commission with econometric estimates of elasticity of demand for all postal products and to document the econometric models that were used to produce them.

Proposed rule 3050.27 requires the Postal Service to file its Workers' Compensation Report and summary workpapers by March 1 of each year.

Proposed rule 3050.28 requires the Postal Service to provide the National Consolidated Trial Balances, National Payroll Hours Summary, the OPRES report, and the HAT report, within 15 days of the close of the relevant period (month or pay period).

Proposed rule 3050.30 requires the Postal Service to provide, by March 31 of each year, information from which the geographic dimension of the universal service obligation in the processing, delivery, and retail functions can be measured.

Proposed rule 3050.31 requires the Postal Service to provide the Commission with its Annual Report of the Postmaster General, Congressional Budget Submission, and Integrated Financial Plan within specified intervals after their approval or release.

Proposed rule 3050.40 requires the Postal Service to provide the Commission with various financial reports corresponding in content and timing to those that public corporations provide to the Securities and Exchange Commission.

Proposed rule 3050.41 requires the Postal Service to provide the Commission with an independent audit of the reports required by proposed rule 3050.40, and supporting documentation.

Proposed rule 3050.42 authorizes the Commission, on its own or at the request of interested persons, to initiate proceedings to improve the quality of the financial information provided under proposed rule 3050.40.

Proposed rule 3050.43 requires the Postal Service to accompany its annual report to the Commission with the comprehensive statement, the performance plan, and the program performance reports required by 39 U.S.C. 2401(e), 2803, and 2804, respectively.

Proposed rules 3050.50 through 3050.53 are reserved.

Proposed rule 3050.60 lists miscellaneous reports that the Postal Service is to provide to the Commission. These include a succinct description of the methods used, and the reasons for selecting the methods used, to produce the most recent Annual Compliance Determination. This is to be provided by July 1 of each year. Also to be provided by July 1 of each year is an update of the history of changes in postal volumes, revenues, and rates that the Postal Service provided in Docket No. R2006–1. In addition, the Postal Service is to provide a master list and electronic copies of publications, handbooks, and data collection forms both at the beginning of each year and when changed; the Household Diary Study when it is completed; and Total Factor Productivity estimates and documentation, by March 1 of each year.

Appendix [Illustrative list referred to in part V.B. of Supplementary Information]

PRODUCTS AND CATEGORIES

Market Dominant Products

Domestic First-Class Mail:
Single-Piece:
Letters

PRODUCTS AND CATEGORIES—Continued

- Flats
- Parcels
  - Total Single-Piece Letters, Flats & Parcels
- Presort:
  - Letters
  - Flats
  - Parcels
    - Total Presort Letters, Flats & Parcels
- Automation:
  - Letters
  - Flats
  - Parcels
    - Total Automation Letters, Flats & Parcels
      - Total Letters, Flats & Parcels

Single-Piece Cards:
- Presort Cards
- Automation Cards
  - Total Cards
  - Total Domestic First-Class Mail

International First-Class Mail:
- Outbound Single-Piece Letters, Flats, International Parcel Post, and Parcels:
- Air:
  - UPU Target System Countries
  - UPU Transition System Countries
  - Subject to bi-lateral agreement
    - Canada
    - Other
- Surface:
  - UPU Target System Countries
  - UPU Transition System Countries
  - Subject to Bi-lateral Agreement
    - Canada
    - Other

Outbound Single-Piece Cards:
- Air:
  - UPU Target System Countries
  - UPU Transition System Countries
  - Subject to Bi-lateral Agreement
    - Canada
    - Other
- Surface:
  - UPU Target System Countries
  - UPU Transition System Countries
  - Subject to Bi-lateral Agreement
    - Canada
    - Other
      - Total Outbound Single-Piece Mail

Inbound Single-Piece Mail:
- Air:
  - UPU Target System Countries Using UPU Rates
  - UPU Target System Countries Using Negotiated Rates
    - Canada
    - Other
  - UPU Transition System Countries Using UPU rates
  - UPU Transition System Countries Using Negotiated Rates
- Surface:
  - UPU Target System Countries Using UPU Rates
  - UPU Target System Countries Using Negotiated Rates
    - Canada
    - Other
  - UPU Transition System Countries Using UPU Rates
  - UPU Transition System Countries Using Negotiated Rates
    - Total Inbound Single-Piece Mail
    - Total International First-Class Mail
      - Total First-Class Mail

Periodicals:
- Within County
- Outside County:
  - Regular Rate
  - Nonprofit
  - Classroom
    - Total Outside County
    - Total Periodicals

Standard Mail:

PRODUCTS AND CATEGORIES—Continued

- Regular Presort Mail:
  - Letters
  - Flats
  - Parcels
  - Not Flat-Machinables
    - Total Regular Presort Mail
- Regular Automation Mail:
  - Letters
  - Flats
    - Total Regular Automation Mail
      - Total Regular Mail
- Nonprofit Presort Mail:
  - Letters
  - Flats
  - Parcels
  - Not Flat-Machinables
    - Total Nonprofit Presort Mail
- Regular Automation Mail:
  - Letters
  - Flats
    - Total Nonprofit Automation Mail
      - Total Nonprofit Mail
        - Total Regular and Nonprofit Mail
- Enhanced Carrier Route Mail:
  - Basic Presort Letters
  - High Density Letters
  - Saturation Letters
    - Total Enhanced Carrier Route Letters
  - Basic Presort Flats
  - High Density Flats
  - Saturation Flats
    - Total Enhanced Carrier Route Flats
  - Basic Presort Parcels
  - High Density Parcels
  - Saturation Parcels
    - Total Enhanced Carrier Route Parcels
      - Total Enhanced Carrier Route Mail
- Nonprofit Enhanced Carrier Route Mail:
  - Basic Presort Letters
  - High Density Letters
  - Saturation Letters
    - Total Non-enhanced Carrier Route Letters
  - Basic Presort Flats
  - High Density Flats
  - Saturation Flats
    - Total Non-enhanced Carrier Route Flats
  - Basic Presort Parcels
  - High Density Parcels
  - Saturation Parcels
    - Total Non-enhanced Carrier Route Parcels
      - Total Nonprofit Enhanced Carrier Route Mail
        - Total Enhanced Carrier Route and Non-enhanced Carrier
  - Route Mail
    - Total Standard Mail

Package Services:

- Single-Piece Parcel Post:
  - Intra-Bulk Mail Center
  - Inter-Bulk Mail Center
    - Total Single-Piece Domestic Parcel Post
  - Inbound Surface Parcel Post (at UPU Rates)
    - Total Single-Piece Parcel Post

Bound Printed Matter:

- Bound Printed Matter Flats:
  - Nonpresorted
  - Presorted
  - Carrier Route
    - Total Bound Printed Matter Flats
- Bound Printed Matter Parcels:
  - Nonpresorted
  - Presorted
  - Carrier Route
    - Total Bound Printed Matter Parcels
      - Total Bound Printed Matter

Media Mail:

PRODUCTS AND CATEGORIES—Continued

- Single Piece
- Presorted
- Total Media Mail

Library Rate:
- Single Piece
- Presorted
  - Total Library Mail
    - Total Media and Library Mail
      - Total Package Services

USPS Penalty Mail
Free-for-the-Blind Mail
Negotiated Service Agreements (NSAs) (list each separately):
- Total Negotiated Service Agreement Mail
  - Total Market Dominant Mail

Special Services:
- Ancillary Services:
  - Address Correction
  - Applications and Mailing Permits:
    - First-Class Mail Presort Fee
    - Standard Mail Mailing Fee
      - Total Applications and Mailing Permits
  - Package Services Mailing Fees:
    - Bound Printed Matter Destination Entry Mailing Fee
    - Library Mail Presort Mailing Fee
    - Media Mail Presort Mailing Fee
      - Total Package Service Fees
  - Parcel Return Service Fees:
    - Account Maintenance Fee
    - Permit Fee
      - Total Parcel Return Service Fees
  - Parcel Select Destination Entry Mailing Fee
  - Periodicals Mailing Fees:
    - Original Entry Fee
    - Reentry Fee
    - Additional Entry Fee
    - News Agent Registry Fee
      - Total Periodicals Mailing Fees
  - Permit Imprint Fee
  - Business Reply Mail:
    - Per-Piece Fee
    - Permit/Account Maintenance Fees
      - Total Business Reply Mail
  - Bulk Parcel Return Service:
    - Per-Piece Fee
    - Account Maintenance Fee
    - Permit Fee
      - Total Bulk Parcel Return Service
  - Certified Mail
  - Certificate of Mailing
  - Collect-on-Delivery
  - Delivery Confirmation
  - Insurance
  - Merchandise Return Service:
    - Per-Piece Fee
    - Account Maintenance Fee
    - Permit Fee
      - Total Merchandise Return Service
  - Parcel Airlift
  - Registered Mail
  - Return Receipt
  - Return Receipt for Merchandise
  - Restricted Delivery
  - Shipper Paid Forwarding
  - Signature Confirmation
  - Special Handling
  - Stamped Envelopes
  - Stamped Cards
  - Premium Stamped Envelopes
  - Premium Stamped Cards
    - Total Ancillary Services

International Ancillary Services:
- International Certificate of Mailing
- International Registered Mail:
  - Outbound International Registered Mail

PRODUCTS AND CATEGORIES—Continued

- Inbound International Registered Mail
  - Total International Registered Mail
- International Return Receipt:
  - Outbound International Return Receipt
  - Inbound International Return Receipt
    - Total International Return Receipt
- International Restricted Delivery:
  - Outbound International Restricted Delivery
  - Inbound International Restricted Delivery
    - Total International Restricted Delivery
- Inbound International Insurance
- Customs Clearance and Delivery Fee
  - Total International Ancillary Services

Address List Services:
- ZIP Coding of Mailing Lists
- Correction of Mailing Lists
- Address Changes for Election Boards
- Carrier Sequencing of Address Cards
  - Total Address List Services
- Caller Service/Reserve Numbers
- Change-of-Address Credit Card Authentication
- Confirm
- International Reply Coupon Services:
  - Outbound International Reply Coupon Service
  - Inbound International Reply Coupon Service
    - Total International Reply Services

International Business Reply Mail Services:
- Outbound Business Reply Mail Service
- Inbound International Business Reply Mail Service
  - Total International Business Reply Service
- Money Orders
- Post Office Boxes
- Other Special Services:
  - Standard Mail Forwarding/Return:
  - Forwarding/Return Fee
  - Weighted Factor Forwarding/Return Fee
    - Total Standard Mail Forwarding/Return
      - Total Market Dominant Special Services
        - Total Market Dominant Mail and Services

Competitive Products

Priority Mail:
- Domestic Priority Mail
- International Priority Mail:
  - Outbound Priority Mail International:
    - Subject to Inward Land Rates
    - Subject to Terminal Dues
      - UPU Target System Countries
      - UPU Transition System Countries
      - Subject to Non-UPU Rates
    - Total Outbound Priority Mail International
- Inbound Air Parcel Post:
  - At UPU Rates
  - At Non-UPU Rates:
    - Canada
    - Other
  - Total Inbound Air Parcel Post
    - Total International Priority Mail
      - Total Priority Mail

Express Mail:
- Domestic Express Mail:
  - Custom Designed
  - Next Day and Second Day Post Office-to-Post Office
  - Next Day and Second Day Post Office-to-Addressee
    - Total Domestic Express Mail

International Express Mail:
- Outbound International Expedited Services
- Inbound International Expedited Services:
  - At UPU Rates
  - At Non-UPU Rates:
    - Total Inbound International Expedited Services
      - Total International Express Mail:
        - Total Express Mail

Package Services:
- Bulk Parcel Post:

PRODUCTS AND CATEGORIES—Continued

- Inter-Bulk Mail Center:
  - Barcoded
  - Origin Bulk Mail Center Presort
  - Bulk Mail Center Presort
    - Total Inter-Bulk Mail Center
- Intra-Bulk Mail Center Barcoded
- Parcel Select:
  - Destination Bulk Mail Center
  - Destination Sectional Center Facility
  - Destination Delivery Unit
    - Total Parcel Select
- Parcel Return Service:
  - Return Bulk Mail Center
  - Return Destination Units
    - Total Parcel Return Service
      - Total Bulk Parcel Post

International Mail:
- International Priority Airlift
- International Surface Airlift
- International Direct Sacks-M-Bags
  - Outbound International Direct Sacks-M-Bags
  - Inbound International Direct Sacks-M-Bags
    - Total International Direct Sacks-M-Bags
  - Global Customized Shipping Services
  - Inbound Surface Parcel Post (at Non-UPU Rates):
    - Canada
    - Other
      - Total Inbound Surface Parcel Post (at Non-UPU Rates)
        - Total International Mail

International Special Services:
- International Money Transfer Service:
  - Outbound International Money Transfer Service
  - Inbound International Money Transfer Service
    - Total International Money Transfer Service
- International Ancillary Services:
  - International Certificate of Mailing
  - International Registered Mail
  - International Return Receipt:
    - Outbound International Return Receipt
    - Inbound International Return Receipt
      - Total International Return Receipt
  - International Restricted Delivery
  - International Insurance:
    - Outbound International Insurance
    - Inbound International Insurance
      - Total International Insurance
  - Custom Clearance and Delivery Fee
    - Total International Ancillary Services
      - Total International Special Services

Negotiated Service Agreements (list each separately):
- Domestic
  - Outbound International:
    - Global Package Discount Contracts
    - Global Expedited Package Services Contracts
    - Global Direct Contracts
    - Global Bulk Economy Contracts
    - Global Plus Contracts
      - Total Outbound International
  - Inbound International:
    - International Business Reply Service Contracts
    - Inbound Direct Entry Contracts with Customers
    - Inbound Direct Entry Contracts with Foreign Postal Administrations
      - Total Inbound International
        - Total Negotiated Service Agreements
  - Premium Forwarding Service:
    - Enrollment Fee
    - Weekly Reshipment Fee
      - Total Premium Forwarding Service

It Is Ordered:

1. The Commission proposes to amend its rules of practice and procedure by deleting rules 3001.102 and 103 [in Subpart G of 39 CFR part

3001] and adding new part 3050—Periodic Reporting as set forth below.

2. Interested persons may submit comments by October 16, 2008.

3. Interested persons may submit reply comments by November 14, 2008.

4. Robert Sidman is designated as the Public Representative representing the interests of the general public in this proceeding.

5. The Secretary shall arrange for publication of this Order in the **Federal Register**.

List of Subjects

39 CFR Part 3001

Admininstrative practice and procedure, Confidential business information, Freedom of information, Sunshine Act.

39 CFR Part 3050

Administrative practice and procedure, Postal Service, Recordkeeping and reporting requirements.

By the Commission.

Issued August 22, 2008.

Judith M. Grady,

Acting Secretary.

For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission proposes to amend 39 CFR chapter III as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(d); 503; 3622; 3633; 3652; 3661.

§ 3001.102 [Removed]

2. Remove and reserve § 3001.102 in subpart G.

§ 3001.103 [Removed]

3. Remove and reserve § 3001.103 in subpart G.

4. Add part 3050—Periodic Reporting, to read as follows:

PART 3050—PERIODIC REPORTING

Sec.

3050.1 Definitions.
3050.2 Documentation of periodic reports.
3050.3 Access to information supporting Commission reports or evaluations.
3050.10 Analytical principles to be applied in the Postal Service's Annual Report.
3050.11 Proposals to change an accepted analytical principle applied in the Postal Service's Annual Report.
3050.12 Obsolescence of special studies relied on to produce the Postal Service's Annual Report.
3050.13 Additional documentation required in the Postal service's Annual Report.
3050.14 Format of the Postal Service's Annual Report.
3050.20 Compliance analysis in the Postal Service's Annual Report.
3050.21 Content of Annual Report.
3050.22 Documentation supporting attributable cost estimates in the Postal Service's Annual Report.
3050.23 Documentation supporting incremental cost estimates in the Postal Service's Annual Report.
3050.24 Documentation supporting estimates of costs avoided by worksharing in the Postal Service's Annual Report.
3050.25 Documentation supporting estimates of volumes and revenues in the Postal Service's Annual Report.
3050.26 Documentation of demand elasticities.
3050.27 Workers' Compensation Report.
3050.28 Monthly and pay period reports.
3050.30 Information needed to estimate the cost of the universal service obligation.
3050.31 Financial reports.
3050.40 Additional financial reporting.
3050.41 Treatment of additional financial reports.
3050.42 Proceedings to improve the quality of financial data.
3050.43 Information on program performance.
3050.50 Information on service performance for domestic products. [Reserved]
3050.51 Information on service performance for Special Services. [Reserved]
3050.52 Information on service performance for international products. [Reserved]
3050.53 Information on customer satisfaction and retail access. [Reserved]
3050.60 Miscellaneous reports and documents.

Authority: 39 U.S.C. 503, 3651, 3652, 3653.

§ 3050.1 Definitions.

For purposes of this part:

(a) *Accepted analytical principle* refers to an analytical principle that was applied by the Commission in its most recent Annual Compliance Determination, unless a different analytical principle subsequently was accepted by the Commission in a final rule.

(b) *Accepted quantification* technique refers to a quantification technique that was applied in the most recent iteration of the periodic report applying that quantification technique or was used to support a new analytical principle adopted in a subsequent proceeding under § 3050.11.

(c) *Analytical principle* refers to a particular economic, mathematical, or statistical theory, precept, or assumption applied by the Postal Service in producing a periodic report to the Commission.

(d) *Annual Compliance Determination* refers to the report that 39 U.S.C. 3653 requires the Commission to issue each year evaluating the compliance of the Postal Service with the requirements of that Act.

(e) *Annual Report* refers to the report that 39 U.S.C. 3652 requires the Postal Service to provide to the Commission each year.

(f) *Product* means a postal service listed as a market dominant or a competitive product in the Mail Classification Schedule.

(g) *Quantification technique* refers to any data entry or manipulation technique whose validity does not require the acceptance of a particular economic, mathematical, or statistical theory, precept, or assumption. A change in quantification technique should not change the output of the analysis in which it is employed.

§ 3050.2 Documentation of periodic reports.

(a) At the time that it submits any periodic report to the Commission, the Postal Service shall identify any input data that has changed, list any quantification techniques that it has changed, and list any corrections that it has made, since that report was last submitted to and accepted by the Commission. It shall provide a brief narrative explanation of each listed change.

(b) If workpapers are required to support a periodic report, they shall:

(1) Show all calculations employed in producing each estimate;

(2) Be sufficiently detailed to allow all numbers used in such calculations to be traced back to public documents or to primary data sources; and

(3) Be submitted in a form, and be accompanied by sufficient explanation and documentation, to allow them to be replicated using a publicly available PC application.

(c) Spreadsheets used in preparing periodic reports shall be submitted in electronic form. They shall display the formulas used, their links to related spreadsheets, and shall not be password protected.

(d) Filing of portions of the documentation required by this section that are not time critical may be delayed up to 2 weeks if the Postal Service obtains permission from the Commission to defer filing of such portions at least 30 days prior to the date on which the periodic report is due.

§ 3050.3 Access to information supporting Commission reports or evaluations.

(a) The Commission shall have access to the following material if, in its judgment, the information supports any

report, assessment, or evaluation required by title 39 of the United States Code, including:

(1) The working papers and supporting matter of the Postal Service or the Postal Service Inspector General in connection with any information submitted under 39 U.S.C. 3652; and

(2) Information that supports the Commission's annual assessment under 39 U.S.C. 3651.

(b) If the Postal Service or the Postal Service Inspector General believes that any document or portion of a document or other matter that it has provided to the Commission in a periodic report or to supplement a periodic report contains information exempt from disclosure under 39 U.S.C. 410(c) or 5 U.S.C. 552(b), that matter shall be treated in accordance with [proposed] part 3007 of this chapter.

§ 3050.10 Analytical principles to be applied in the Postal Service's Annual Report.

In its Annual Report, the Postal Service shall use only accepted analytical principles as defined in § 3050.1.

§ 3050.11 Proposals to change an accepted analytical principle applied in the Postal Service's Annual Report.

To improve the quality, accuracy, or completeness of the data or analysis of data contained in the Postal Service's Annual Report, the Commission, acting on its own behalf, may institute a proceeding to change an accepted analytical principle. In addition, any interested person, including the Postal Service or a Public Representative, may submit a petition to the Commission to initiate such a proceeding.

(a) *Form and content of petition.* The petition shall identify the accepted analytical principle proposed for review, explain its perceived deficiencies, and suggest how those deficiencies should be remedied.

(1) If the petition proposes that a specific alternative analytical principle be followed, it should include the data, analysis, and documentation on which the proposal is based, and, where feasible, include an estimate of the impact of the proposed change on the relevant characteristics of affected postal products, including their attributable cost, avoided cost, elasticity of demand, average revenue, or service attainment.

(2) If the petitioner requests access to data from the Postal Service to support the assertions or conclusions in its petition, and such data are not otherwise available, it shall accompany the petition with a request to gain access to such data. The petitioner's request should identify the data sought, and include the reasons for believing that the data will support its petition. To expedite its evaluation of the data request, the Commission may, after reasonable public notice, order that answers or objections be presented orally or in writing.

(b) *Procedures for processing petition.* To better evaluate a petition to change an accepted analytical principle, the Commission may order that it be made the subject of discovery. By request of any interested person, or on its own behalf, the Commission may order that the petitioner and/or the Postal Service provide experts on the subject matter of the proposal to participate in technical conferences, prepare statements clarifying or supplementing their views, or be deposed by officers of the Commission.

(c) *Action on the petition.*

(1) After the conclusion of any discovery procedures, the Commission shall determine whether to issue a notice of proposed rulemaking based on the petition and the supporting material received. Such notice shall be evaluated by procedures that are consistent with 5 U.S.C. 553. Interested parties will be afforded an opportunity to present comments and reply comments, either orally or in writing, at the Commission's discretion.

(2) If accepted by the Commission, the change proposed in the notice of proposed rulemaking shall be published in a notice of final rule in the **Federal Register** (and on the Commission Web site).

§ 3050.12 Obsolescence of special studies relied on to produce the Postal Service's Annual Report.

(a) For each special study whose results are used to produce the estimates in its Annual Report, the Postal Service shall indicate the date the study was completed and certify that the study reflects current operating conditions and procedures. If the Postal Service cannot certify that a study reasonably reflects current operating conditions or procedures, it must provide a timetable for updating the study.

(b) A presumption of obsolescence shall attach to any special study that is more than 5 years old at the time that the annual compliance report is due.

(c) To obtain a waiver of the requirements of this section, the Postal Service must file a petition at least 60 days before the date upon which its Annual Report is due. The petition and supplemental materials must demonstrate to the Commission's satisfaction that any of the following criteria is met:

(1) The operating conditions reflected in the special study have not changed;

(2) Updating the results of the special study would not have a significant effect on the costs, volumes, or revenues estimated for any postal product;

(3) The cost of updating the special study would outweigh the resulting benefits; or

(4) An appropriate update or replacement of the special study is underway.

§ 3050.13 Additional documentation required in the Postal Service's Annual Report.

(a) At the time the Postal Service files its Annual Report, it shall include a brief narrative explanation of any changes to accepted analytical principles that have been made since the most recent Annual Compliance Determination was issued, and the reasons that those changes were accepted.

(b) The Annual Report is subject to the requirements of § 3050.2.

§ 3050.14 Format of the Postal Service's Annual Report.

The Postal Service's Cost and Revenue Analysis Report shall be presented in a format reflecting the classification structure in the current Mail Classification Schedule. It shall also be presented in an alternative, more disaggregated format capable of reflecting the classification structure in effect prior to the adoption of the Postal Accountability and Enhancement Act.

§ 3050.20 Compliance analysis in the Postal Service's Annual Report.

The Postal Service's Annual Report shall include an analysis of the information that it contains in sufficient detail to demonstrate that, in the fiscal year covered by its report, all of its products (market dominant and competitive) comply with all of the applicable provisions of chapter 36 of title 39 of the U.S. Code and the regulations promulgated thereunder, meet the goals established under 39 U.S.C. 2803 and 2804, and promote the public policy objectives set out in title 39 of the U.S. Code.

§ 3050.21 Content of Annual Report.

No later than 90 days after the close of each fiscal year, the Postal Service shall submit a report to the Commission analyzing its cost, volume, revenue, rate, and service information in sufficient detail to demonstrate that all products during such year comply with all applicable provisions of title 39 of

the United States Code. The report shall provide:

(a) The volume and revenue generated by each product;

(b) The attributable costs caused by, and the contribution to institutional costs provided by, each product;

(c) The quality of service received by each market dominant product, including the speed of delivery and the reliability of delivery;

(d) The price elasticity of demand for each product;

(e) For each market dominant workshare discount offered during the reporting year:

(1) The per-item cost avoided by the Postal Service by virtue of such discount;

(2) The percentage of such per-item cost avoided that the per-item workshare discount represents;

(3) The per-item contribution made to institutional costs; and

(4) When the Postal Service invokes the exception provisions of 39 U.S.C. 3622(e)(2)(A) through (D), specify the factual and analytical bases for its conclusion that those exceptions apply.

(f) For each market dominant negotiated service agreement:

(1) Identify its rates and service features;

(2) Estimate its costs, volumes, revenues, and elasticity of demand;

(3) Analyze its effect on the operational performance of the Postal Service, specifying the affected operations and, to the extent possible, quantifying the effect;

(4) Analyze the contribution of the agreement to institutional costs for its most recent year of operation. The year analyzed shall end on the anniversary of the negotiated service agreement that falls within the fiscal year covered by the Postal Service's Annual Report and include the 12 preceding months. The analysis shall show all calculations and fully identify all inputs. Inputs used to estimate the effect on total contribution to the Postal Service, such as unit costs and price elasticities, shall be updated using fiscal year values; and

(5) Analyze the effect of the negotiated service agreement (and other functionally equivalent negotiated service agreements) on the marketplace. If there were harmful effects, explain why those effects were not unreasonable.

(g) For each competitive negotiated service agreement:

(1) Identify its rates and service features; and

(2) Estimate its costs, volumes, revenues, and its elasticity of demand;

(h) For market tests of experimental products:

(1) Estimate their costs, volumes, and revenues in aggregate by market dominant and by competitive product group;

(2) Estimate the quality of service of each individual experimental product; and

(3) Indicate whether offering the experimental product has created an inappropriate competitive advantage for the Postal Service or any mailer.

(i) For each non-postal service, estimate its costs, volumes, and revenues; and

(j) Provide any other information that the Postal Service believes will help the Commission evaluate the Postal Service's compliance with the Postal Accountability and Enhancement Act.

§ 3050.22 Documentation supporting attributable cost estimates in the Postal Service's Annual Report.

The following items shall be reported when they have changed from those used in the most recent Annual Compliance Determination:

(a) The Cost and Revenue Analysis Report (CRA), including relevant data on international mail services;

(b) The Cost Segments and Components Report (CSC);

(c) All input data and processing programs used to produce the CRA report, to include:

(1) CSC Reconciliation to Financial Statement and Account Reallocations;

(2) Manual Input Requirement (reflecting direct accounting or modeled costs);

(3) The CSC ''A'' report (showing how indirect costs are distributed to products based on the distribution of direct costs);

(4) The CSC ''B'' report (showing how indirect Property Equipment Supplies Services and Administrative (PESSA) costs are distributed to products;

(5) The CSC ''D'' report (showing final adjustments to total attributable and product-specific costs);

(6) The CSC ''F'' report (containing distribution keys for indirect labor components);

(7) The control file that includes the CRA program control string commands used to produce the CRA and the above-described CSC reports; and

(8) The master list of cost segment components, including all of the components used as distribution keys in the development of the CSC report and its accompanying reports.

(d) Spreadsheet workpapers underlying development of the CSC report by component. These workpapers shall include the updated factors and input datasets from the supporting data systems used, including:

(1) The In-Office Cost System (IOCS);

(2) The Management Operating Data System (MODS);

(3) The City Carrier Cost System (CCCS);

(4) The City Carrier Street Time Sampling System (CCSTS);

(5) The Rural Carrier Cost System (RCCS);

(6) The National Mail Count;

(7) The Transportation Cost System (TRACS);

(8) System for International Revenues and Volumes/Outbound (SIRV/O);

(9) System for International Revenues and Volumes/Inbound (SIRV/I);

(10) Military and International Dispatch and Accountability System; and

(11) Inbound International Revenue Accounting Systems (IAB data).

(e) The econometric analysis of carrier street time, including input data, processing programs, and output;

(f) The Window Service Supply Side Variability, Demand Side Variability, and Network Variability studies, including input data, processing programs, and output;

(g) The econometric analysis of purchased highway transportation cost variability, including input data, processing programs, and output;

(h) The econometric analysis of freight rail cost variability, including input data, processing programs, and output;

(i) A list and summary description of any transportation contracts whose unit rates vary according to the level of postal volume carried. The description should include the product or product groups carried under each listed contract;

(j) Spreadsheets and processing programs distributing attributable mail processing costs;

(k) The Vehicle Service Driver Data Collection System (VSD);

(l) Input data, processing programs, and output of the Vehicle Service Driver Cost Variability Study;

(m) Econometric analysis of postmaster cost variability;

(n) Floor Space Survey; and

(o) Density studies used to convert weight to cubic feet of mail.

§ 3050.23 Documentation supporting incremental cost estimates in the Postal Service's Annual Report.

Input data, processing programs, and output of an incremental cost model shall be reported.

§ 3050.24 Documentation supporting estimates of costs avoided by worksharing in the Postal Service's Annual Report.

The following items shall be reported, including supporting calculations and derivations:

(a) Letter, card, flat, parcel and non-flat machinable mail processing cost models with Delivery Point Sequence percentages calculated, which shall include:

(1) Coverage factors for any equipment where coverage is less than 100 percent;

(2) MODS productivities;

(3) Piggyback factors and supporting data;

(4) Entry profiles, bundle sorts, and pieces per bundle;

(5) Bundle breakage, handlings, and density;

(6) Mail flow density and accept rates;

(7) Remote Computer Reader finalization costs, cost per image, and Remote Bar Code Sorter leakage;

(8) Percentage of mail finalized to carrier route;

(9) Percentage of mail destinating at post office boxes; and

(10) Wage rates and premium pay factors.

(b) Pallet cost models for Periodicals;

(c) Sack cost models for Periodicals;

(d) Bundle cost models for Periodicals:

(e) Other container cost models for Periodicals;

(f) Analysis of Periodicals container costs;

(g) Business Reply Mail cost supporting material;

(h) Enhanced Carrier Route mail processing saturation savings;

(i) Mail processing unit costs by shape and cost pool for each product and benchmark category;

(j) Delivery costs by product, shape, presort level, automation compatibility, and machinability, including Detached Address Label cost calculations; and

(k) Dropship cost avoidance models.

§ 3050.25 Documentation supporting estimates of volumes and revenues in the Postal Service's Annual Report.

The following items shall be provided:

(a) The Revenue, Pieces, and Weight (RPW) report, including estimates by shape, weight, and indicia, and the underlying billing determinants within 90 days of the close of each fiscal year;

(b) Revenue, Pieces, and Weight by rate category and special service by quarter (within 30 days of the close of the quarter);

(c) Quarterly Statistics Report, including estimates by shape, weight, and indicia (within 30 days of the close of the quarter); and

(d) Billing determinants (within 40 days of the close of the quarter).

§ 3050.26 Documentation of demand elasticities.

By January 20 of each year, the Postal Service shall provide econometric estimates of demand elasticity for all postal products accompanied by the underlying econometric models and the input datasets used.

§ 3050.27 Workers' Compensation Report.

The Workers' Compensation Report, including summary workpapers, shall be provided by March 1 of each year.

§ 3050.28 Monthly and pay period reports.

The following reports shall be provided within 15 days of the close of the relevant period:

(a) National Consolidated Trial Balances and the Revenue and Expense Summary (monthly);

(b) National Payroll Hours Summary in electronic form (pay period);

(c) On-roll and Paid Employee Statistics (ORPES) (pay period); and

(d) Postal Service Active Employee Statistical Summary (HAT report) (pay period).

§ 3050.30 Information needed to estimate the cost of the universal service obligation.

The following reports shall be provided by March 31 of each year:

(a) Mail flow volumes by product (or product group) between each pair of mail processing facilities, including local turnaround mail for each facility.

(b) Direct and indirect costs, workhours, and CCCS/RCCS volumes by sampled product (or product group), carrier route, facility, and ZIP Code;

(c) For sampled city routes:

(1) Actual and possible deliveries by type;

(2) Actual and possible stops by type:

(3) Collection boxes;

(4) Number of businesses served; and

(5) Miles identified by processing facility, route type, and ZIP Code;

(d) For sampled rural routes:

(1) Stops;

(2) Boxes served, and

(3) Mailpieces identified by carrier route, route type, facility, and ZIP Code;

(e) For each retail facility in a representative sample:

(1) Revenues generated; and

(2) Costs incurred identified by ZIP Code.

§ 3050.31 Financial reports.

The following reports shall be provided annually at the time noted:

(a) Annual Report of the Postmaster General (when released to the public);

(b) Congressional Budget Submission and supporting workpapers, including Summary Tables SE 1, 2, and 6 (within 7 days of the submission of the Federal Budget by the President to the Congress); and

(c) Integrated Financial Plan (within 7 days of approval by the Board of Governors).

§ 3050.40 Additional financial reporting.

The Postal Service shall file the following financial reports with the Commission. These reports shall include the information required by sections 13 and 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)).

(a) *Quarterly report.* Within 40 days after the end of each fiscal quarter, the Postal Service shall file a report containing the information required by Form 10–Q or any successor form as it may be revised.

(b) *Annual report.* Within 60 days after the end of each fiscal year, the Postal Service shall file a report containing the information required by Form 10–K or any successor form as it may be revised. That report shall:

(1) Comply with section 404 (Management Assessment of Internal Controls) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262) beginning with the annual report for FY 2010;

(2) Include with respect to the Postal Service's pension and post-retirement health obligations:

(i) The funded status of the Postal Service's pension and post-retirement health obligations;

(ii) Components of the net change in the fund balances and obligations and the nature and cause of any significant changes;

(iii) Components of net periodic costs;

(iv) Cost methods and assumptions underlying the relevant actuarial valuations;

(v) The effect of a 1 percent increase in the assumed health care cost trend rate for each future year on the service and interest costs and the accumulated obligations;

(vi) Actual contributions to and payments from the funds for the years presented and the estimated future contributions and payments for each of the following 5 years;

(vii) The composition of plan assets reflected in the fund balances; and

(viii) The assumed rate of return fund balances and the actual rate of returns for the years presented.

(3) The Postal Service shall obtain the information listed in paragraph (b)(2) of this section from the Office of Personnel Management no later than 30 days after the end of each fiscal year.

(c) *Current report.* Within 4 days after the occurrence of any one or more events specified in the items in sections 1–6 and 9 of Form 8–K or any successor form as it may be revised, the Postal Service shall file a report containing the information required by Form 8–K.

(d) *Segment reporting.* For purposes of Form 10–Q and Form 10–K, the Postal Service shall include segment

reporting, beginning with reports for fiscal year 2010. The Postal Service shall determine the appropriate segment reporting under paragraph (a) of this section after consultation with the Postal Regulatory Commission.

§ 3050.41 Treatment of additional financial reports.

(a) The Postal Service shall obtain an opinion from an independent auditor on whether the information listed in § 3050.40(b) is fairly stated in all material respects, either in relation to:

(1) The basic financial statements as a whole; or

(2) On a stand-alone basis.

(b) The Postal Service and its independent auditor shall provide the Commission with the audit documentation and any other matter that supports the information submitted under § 3050.40.

§ 3050.42 Proceedings to improve the quality of financial data.

The Commission may on its own motion, or at the request of an interested person, initiate proceedings to improve the quality, accuracy, or completeness of Postal Service data required under § 3050.40 whenever it appears that:

(a) The data have become significantly inaccurate or can be significantly improved; or

(b) Those revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

§ 3050.43 Information on program performance.

The Postal Service shall accompany its Annual Report with the following items:

(a) The comprehensive statement required by 39 U.S.C. 2401(e);

(b) The performance plan required by 39 U.S.C. 2803; and

(c) The program performance reports required by 39 U.S.C. 2804.

§ 3050.50 Information on service performance for domestic products.

[Reserved]

§ 3050.51 Information on service performance for Special Services.

[Reserved]

§ 3050.52 Information on service performance for international products.

[Reserved]

§ 3050.53 Information on customer satisfaction and retail access.

[Reserved]

§ 3050.60 Miscellaneous reports and documents.

The following reports shall be provided at the times indicated:

(a) A master list of publications and handbooks, including those related to internal information procedures, at the beginning of each fiscal year;

(b) An electronic copy of each publication, handbook, and data collection form, at the beginning of each fiscal year;

(c) Data collection forms, and corresponding training handbooks (when changed);

(d) Household Diary Study (when completed);

(e) Input data and calculations used to produce the annual Total Factor Productivity estimates (by March 1 of each year); and

(f) Succinct narrative explanations of how the estimates in the most recent Annual Compliance Determination were calculated and the reasons that particular analytical principles were followed. The narrative explanations shall be comparable in detail to that which had been provided in Library Reference 1 in omnibus rate cases processed under the Postal Reorganization Act (by July 1 of each year).

(g) An update of the history of changes in postal volumes, revenues, rates, and fees that appears in Library References USPS–LR–L–73 through 76 in Docket No. R2006–1 (by July 1 of each year).

[FR Doc. E8–21060 Filed 9–12–08; 8:45 am]

BILLING CODE 7710–FW–P

Federal Register

Monday,
September 15, 2008

Part III

Department of Housing and Urban Development

24 CFR Parts 201 and 203

Federal Housing Administration: Insurance for Manufactured Housing; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 201 and 203

[Doc. No. FR–5075–P–01]

RIN 2502–AI45

Federal Housing Administration: Insurance for Manufactured Housing

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's regulations governing manufactured homes that are to be the security for Federal Housing Administration (FHA) Title I loans and Title II insured mortgages. The proposed rule would permit, as eligible for FHA insurance, mortgages on manufactured homes to be installed in accordance with the Model Installation Standards, which were the subject of notice and rulemaking that resulted in a final rule published on October 19, 2007. Acceptance of mortgages on these manufactured homes for FHA insurance will provide for greater flexibility of design, thereby permitting additional options for affordable housing. This proposed rule would apply to all newly installed manufactured homes that are to be security for Title I and Title II loans and any manufactured home that has been previously set up and erected at another location and that is to be security for a Title I loan. An existing manufactured home that secures a Title I loan and that has been installed or erected on a homesite in compliance with the manufacturer's requirements for anchoring, support, stability, and maintenance would be exempt from compliance with this proposed rule, unless it is relocated from the site of its original installation after the effective date of this proposed rule.

DATES: *Comment Due Date:* November 14, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0001.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule. *No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Peter Gillispie, Home Valuation Policy Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9270, Washington, DC 20410–8000, telephone number (202) 708–2121 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 2 of the National Housing Act (12 U.S.C. 1703) (the NHA) authorizes the Secretary to insure approved lenders against losses sustained as a result of borrower default on, among other things, manufactured home loans. The regulations implementing the Title I programs are found in 24 CFR part 201. Section 201.21 establishes the eligibility requirements for manufactured home loans. Section 201.21(c)(3) provides, in part, that any permanent foundation shall be constructed in accordance with the current edition of HUD's Permanent Foundations Guide for Manufactured Housing (HUD Handbook 4930.3).

Under Title II of the NHA, section 203 authorizes the Secretary to insure mortgages used to finance the purchase of single-family homes. HUD's regulations implementing section 203 of the Act are located at 24 CFR part 203 (entitled ''Single Family Mortgage Insurance''). Section 203.43f contains the eligibility criteria for FHA-insured mortgages covering manufactured homes, describing the physical characteristics the home and foundation must possess, as well as required terms and conditions of the mortgage.

Specifically, the requirements currently contained in § 203.43f(c)(i) and (ii) provide that a manufactured home must be erected on a site-built permanent foundation that meets or exceeds the applicable requirements of the Minimum Property Standards (MPS) for One- and Two-Family Dwellings (24 CFR 200.929(b)(1)), among other requirements, and that the space beneath a manufactured home be enclosed by continuous foundation-type construction designed to resist all forces to which it is subjected without transmitting forces to the building superstructure. HUD has determined that satisfying the requirements of these regulations is not the only means of protecting the Mutual Mortgage Insurance Fund (MMIF) and that the regulations should reflect current developments in the installation of manufactured homes.

The Manufactured Housing Improvements Act of 2000 (the Act), which amended the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C. 5401–5426), established new requirements pertaining to the installation of manufactured homes. One of the provisions requires HUD to establish Model Manufactured Home Installation Standards.

On October 19, 2007 (72 FR 59338), HUD published its Model Manufactured Home Installation Standards final rule. HUD's final rule codified the Model Manufactured Home Installation Standards (Model Installation Standards) in a new part 3285 of Title 24 of the Code of Federal Regulations

(CFR). The Model Installation Standards contain both minimum acceptable nationwide standards for the installation and set-up of manufactured homes and detailed methods for the design and construction of foundations, based on site conditions and home design features that support manufactured housing. The Model Installation Standards also allow alternative foundation systems or designs that meet or exceed the requirements of the Model Installation Standards, provided the methods are approved by a professional engineer or a registered architect in accordance with acceptable engineering practice.

On June 20, 2008 (73 FR 35270), HUD published a final rule entitled, ''Manufactured Home Installation Program,'' which established a federal manufactured home installation program in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Act of 2000. The installation program final rule is a companion rule to the Model Installation Standards final rule. The installation program sets out manufactured home installation requirements that are applicable in all states, requirements that are applicable in only those states in which HUD is administering the installation program, and requirements for states that choose to administer their own installation programs in lieu of the HUD program. The new elements required by the Manufactured Housing Improvement Act of 2000 to be integrated into an acceptable manufactured home installation program are the establishment of qualified installation standards, licensing and training of installers, and inspection of the installation of manufactured homes. The June 20, 2008, final rule established the HUD-administered installation program that operates in a state, unless that state certifies that it has its own qualifying program.

II. This Proposed Rule

This proposed rule would revise the existing requirements contained in 24 CFR parts 201 and 203, which pertain to eligibility of mortgages on manufactured homes for FHA insurance, by removing all requirements for site-built permanent foundations and perimeter enclosures designed in compliance with the Permanent Foundations Guide for Manufactured Housing (HUD Handbook 4930.3G). In place of the current requirements, the proposed rule would allow FHA insurance for mortgages on manufactured homes that are installed in a manner that meets or exceeds the requirements set forth in the Model Installation Standards, which HUD has codified at 24 CFR part 3285.

This proposed rule would prevent HUD from having two different foundation standards for the installation of manufactured homes that are security for FHA-insured mortgages. The Model Installation Standards will establish the minimum acceptable standards nationwide for the installation and set up of new manufactured homes and also serve as the basis for qualifying a state's installation program under the Manufactured Home Installation Program. HUD believes that the benefits of this proposed rule significantly outweigh its costs, especially in light of the recently adopted Model Installation Standards and the Manufactured Home Installation Program.

The Model Installation Standards will protect FHA's interest in manufactured homes financed with HUD-insured loans, and the MMIF will not be exposed to any additional risk by the Department's adoption of these standards as the eligibility requirements for FHA-insured financing. In developing the Model Installation Standards, the Department was required to consider proposed standards recommended by a consensus committee. Both the consensus committee and the Department were required to consider relevant data, including research, development, and testing activities by private and government organizations, to determine how to protect the interests of the public, as well as the Department. The resulting Model Installation Standards provide greater clarity, precision, and objectivity for requirements that apply to the set-up of manufactured homes. They require that foundations for manufactured home installations be based on site conditions, home design features, and the loads the home was designed to withstand as evidenced on the home's data plate. The standards have been evaluated by HUD and have been determined to provide adequate resistance to the design loads established by the Manufactured Home Construction and Safety Standards. With these uniform, minimum standards, supported by a rigorous program of licensing and training of installers and inspections of manufactured home installations, HUD believes the result will be a more reliable set of benchmarks and that risk to the MMIF would be reduced, not increased.

Similarly, HUD believes the benefits for homebuyers will also outweigh any increased costs they face. On June 14, 2006, HUD published estimated costs of compliance with installation program requirements for states in which HUD administers an installation program, as well as for states that choose to administer their own installation programs. (See 71 FR 34483, left column.) The cost of complying with the installation program in states that administer their own programs was estimated at $17 per manufactured home. In states where HUD administers the installation program, the cost was estimated at $1,126 per single-wide manufactured home and $1,176 per double-wide manufactured home. HUD assumes that a portion of these costs would be passed on to the consumer. Nonetheless, by making manufactured homes installed in compliance with the Model Installation Standards eligible for FHA financing, HUD will provide financing alternatives for homeowners whose options might otherwise be limited to the subprime market. Homeowners will also benefit by knowing that their homes have been installed by trained, licensed installers and that installations are subject to inspection. By replacing FHA's current foundation requirements with the Model Installation Standards, HUD would promote affordable housing by reducing set-up costs. Through the same measure, HUD would provide for the quality and safety of manufactured homes by applying minimum nationwide standards and deferring to the states for establishment of additional requirements for the set-up and installation of manufactured homes by licensed installers overseen by inspectors who meet HUD qualifications.

This proposed rule would require all new and existing manufactured homes that are to be security for Title II FHA-insured mortgages and all new manufactured homes that are to be security for Title I loans to be in compliance with the Model Installation Standards. A manufactured home that is to be security for a Title I loan and that has been relocated from the original homesite upon which it had been installed and set-up must be in compliance with the Model Installation Standards. A manufactured home that has been installed or erected on a homesite in compliance with the manufacturer's requirements for anchoring, support, stability, and maintenance would be exempt from compliance with this rule, unless it is relocated from the site of its original installation after the effective date of this proposed rule.

Even with the changes proposed by this rule, in order to qualify for FHA mortgage insurance, manufactured homes in some states may have to be installed or erected in accordance with requirements beyond those in the Model Installation Standards. FHA is authorized to insure loans under Title II of the National Housing Act only if the loan is secured by ''real estate.'' If a manufactured home installed in accordance with the Model Installation Standards would be classified and taxed as personal property under state or local law, then the installation or erection would have to meet such additional requirements as necessary for it to be classified as real property. The determination whether a manufactured home is classified and taxed as real property, and therefore eligible for insurance under Title II, may depend on the foundation and the manner of attachment of the home to the foundation.

Additionally, this proposed rule would revise the eligibility requirements for Title II manufactured homes that are located in areas designated by the Federal Emergency Management Agency (FEMA) as floodplain areas having special flood hazards. Specifically, this proposed rule would require that the elevation of the lowest floor of the manufactured home must be at or above the FEMA-designated base flood elevation and eliminate the requirement that the finished grade level beneath the manufactured home be at or above the base flood elevation. This change will align the flood hazard requirements for manufactured homes with that of stick-built homes.

HUD expects and invites comments in response to this proposed rule on the suitability of using the Model Installation Standards for FHA insurance eligibility purposes. With the Model Installation Standards having now been issued in final form (with an effective date of October 20, 2008), the public has an opportunity to submit comments in response to this proposed rule for HUD's consideration that may result in appropriate changes to the final, effective version of this rule. However, extensive comments on the technical aspects of the Model Installation Standards have already been received and were considered by HUD in the development of the final rule on Model Installation Standards, and such comments do not need to be resubmitted in response to this proposed rule. Comments submitted to HUD on the Model Installation Standards also recommended that any references by HUD in any housing program only use the Model Installation Standards adopted under part 3285 or a state equivalent, and this proposed rule would be responsive to such comments.

III. Findings and Certifications

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Hearing-or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal government, or the private sector within the meaning of UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the executive order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the executive order.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) generally requires an agency to conduct regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, which are the FHA-approved lenders that are directly affected by this rule. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would remove, from its regulations governing mortgages on manufactured homes that are eligible for FHA insurance, those prescriptive foundation requirements for manufactured homes and would establish the minimum acceptable standards nationwide for the installation and set-up of manufactured homes. The removal of prescriptive requirements eases the burden on FHA-approved lenders of having to ensure that manufactured homes for which homebuyers are seeking FHA insurance for their mortgages meet standards different from the more widely used Model Installation Standards. Therefore, the undersigned certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the finding must be scheduled by calling the Regulations Divisions at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number (CFDA) for Manufactured Home Loan Insurance is 14.110, and the CFDA for Mortgage Insurance (Homes) is 14.117.

List of Subjects

24 CFR Part 201

Claims, Health facilities, Historic preservation, Home improvement, Loan programs-housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians-lands, Loan programs-housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, HUD proposes to amend 24 CFR parts 201 and 203, as follows:

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 1703 and 3535(d).

2. Revise § 201.21(c)(3), to read as follows:

§ 201.21 Manufactured home loan eligibility.

* * * * *

(c) * * *

(3) Except for an existing manufactured home that has not been relocated from the homesite upon which it was originally erected or installed, the installation or erection of a manufactured home on the homesite must meet or exceed the requirements set forth in 24 CFR part 3285, the Model Manufactured Home Installation Standards, and all applicable state and local requirements governing the installation and construction of the manufactured home foundation system. An existing manufactured home that has not been relocated from the homesite upon which it was originally erected must have been installed in compliance with the manufacturer's requirements for anchoring, support, stability, and maintenance.

* * * * *

3. Revise § 201.26(b)(4)(iii), to read as follows:

§ 201.26 Conditions for loan disbursement.

* * * * *

(b) * * *

(4) * * *

(iii) Except for an existing manufactured home that has not been relocated from the homesite upon which it was originally erected or installed, the installation or erection of a manufactured home on the homesite meets or exceeds the requirements set forth in 24 CFR part 3285, the Model Installation Standards, and all applicable state and local requirements governing the installation and construction of the manufactured home foundation system. An existing manufactured home that has not been relocated from the homesite upon which it was originally erected has been installed in compliance with the manufacturer's requirements for anchoring, support, stability, and maintenance.

* * * * *

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

2. Amend § 203.43f as follows:

a. Remove paragraph (c)(ii);

b. Redesignate paragraph (b) as paragraph (b)(1) and add paragraph (b)(2),

c. Redesignate paragraph (c)(i) as paragraph (c)(1) and paragraphs (c)(iii) through (vi) as (c)(2) through (5), and

d. Revise paragraph (a) and newly redesignated paragraphs (c)(1) and (c)(5), and paragraph (d).

The amendments read as follows:

§ 203.43f Eligibility of mortgages covering manufactured homes.

* * * * *

(a) The manufactured home, when erected on site, shall have floor space area of not less than 400 square feet and shall have been constructed in conformance with the National Manufactured Home Construction and Safety Standards, as evidenced by a certification label affixed thereto in accordance with 24 CFR 3280.8. A manufactured home that has been moved from the site upon which it was originally installed is not eligible for insurance.

(b) * * *

(2) In jurisdictions where compliance with the Model Manufactured Home Installation Standards, as set forth at 24 CFR part 3285, does not result in the classification and taxation of the manufactured home as real estate, the foundation of the home and the manner of its attachment to the foundation must be adapted in such a manner as to cause the home to be classified and taxed as real estate, as well as meet or exceed the requirements of 24 CFR part 3285, in order for the home to be eligible for mortgage insurance.

(c) * * *

(1) The installation or erection of a manufactured home on the homesite must meet or exceed the requirements set forth in 24 CFR part 3285 and all applicable state and local requirements governing the installation and construction of the manufactured home foundation system, as determined by an inspection performed in accordance with 24 CFR part 3286. The requirement for an inspection performed in accordance with 24 CFR part 3286 does not apply to FHA-to-FHA refinancing transactions. The towing hitch or running gear, which includes axles, brakes, wheels, and other parts of the chassis that operate only during transportation, shall have been removed. The elevation of the lowest floor in structures with basements shall be at or above the Federal Emergency Management Agency (FEMA) designated base flood elevation (as defined in 44 CFR 59.1) and meet or exceed the requirements set forth in 44 CFR 60.3(a) through (e). The elevation of the lowest floor structures without basements shall be at or above the FEMA-designated base flood elevation and meet or exceed the requirements set forth in 44 CFR 60.3(a) through (e). Basements or any permanent enclosure of space below the lowest floor of a structure are prohibited for manufactured homes located in FEMA-designated ''coastal high hazard areas.'' For purposes of this rule, the term ''coastal high hazard area'' has the meaning set forth in FEMA regulations at 44 CFR 59.1. The site, site improvements, and all other features of the mortgaged property not addressed by the Manufactured Home Construction and Safety Standards or the Model Installation Standards shall meet or exceed the Minimum Property Standards (see 24 CFR 200.926 through 200.926d) and applicable state and local government requirements governing the installation and construction of the manufactured home supporting foundation.

* * * * *

(5) Section 203.14 of this subpart is modified to the extent provided in this paragraph. Applications relating to insurance of mortgages under this paragraph (c) must be accompanied by an agreement in form satisfactory to the Commissioner executed by the seller or builder or such other person as the Commissioner may require agreeing that

in the event of any sale or conveyance of the dwelling within a period of one year beginning with the date of initial occupancy, the seller, builder, or such other person will at the time of such sale or conveyance deliver to the purchaser or owner of such property the manufacturer's warranty on a form prescribed by the Commissioner, which shall provide that the manufacturer's warranty is in addition to and not in derogation of all other rights and remedies the purchaser or owner may have, and a warranty in form satisfactory to the Commissioner warranting that the manufactured home, installation, and all site improvements are constructed in substantial conformity with the plans and specifications (including amendments thereof or changes and variations therein that have been approved in writing by the Commissioner) on which the Commissioner has based his valuation of the dwelling. The warranty shall also include provisions that the manufactured home sustained no hidden damage during transportation, and if the manufactured home is a double-wide, that the sections were properly joined and sealed. Such agreement must provide that upon the sale or conveyance of the dwelling and delivery of the warranty, the seller, builder or such other person will promptly furnish the Commissioner with a conformed copy of the warranty establishing by the purchaser's receipt thereon that the original warranty has been delivered to the purchaser in accordance with this section.

(d) In the case of a manufactured home that has been permanently erected on a site for more than one year prior to the date of the application for mortgage insurance:

(1) The foundation shall meet or exceed the standards set forth in 24 CFR part 3285 and all applicable state and local government requirements.

(2) The site, site improvements, and all other features of the mortgaged property not addressed by the Manufactured Home Construction and Safety Standards or the Model Installation Standards shall meet or exceed applicable requirements of the Requirements for Existing Housing—One to Four Family Living Units (HUD Handbook 4905.1). The elevation of the lowest floor in structures with basements as defined in FEMA regulations at 44 CFR 59.1 shall be at or above the FEMA-designated base flood elevation and meet or exceed the requirements set forth in 44 CFR 60.3(a) through (e). The elevation of the lowest floor in structures without basements shall be at or above the FEMA-designated base flood elevation and meet or exceed the requirements set forth in 44 CFR 60.3(a) through (e). Basements or any permanent enclosure of space below the lowest floor of a structure are prohibited for manufactured homes located in FEMA-designated ''coastal high hazard areas.''

(3) The manufactured home shall have been occupied only at the location subject to the mortgage sought to be insured.

Dated: August 14, 2008.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E8–20787 Filed 9–12–08; 8:45 am]

BILLING CODE 4210–67–P

Federal Register

Monday,
September 15, 2008

Part IV

The President

Executive Order 13472—Executive Branch Responsibilities With Respect To Orders of Succession

Federal Register
Vol. 73, No. 179
Monday, September 15, 2008

Presidential Documents

Title 3—

The President

Executive Order 13472 of September 11, 2008

Executive Branch Responsibilities With Respect To Orders of Succession

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* It is the policy of the Federal Government to ensure that each executive branch agency can perform its essential functions and remain an effectively functioning part of the Federal Government under all conditions. Accordingly, each agency shall take all appropriate actions to establish, maintain, and, as necessary, revise an order of succession, or to propose presidential action to establish or revise an order of succession.

Sec. 2. *Definitions.* As used in this order:

(a) ''agency'' means:

(i) an executive agency as defined in section 105 of title 5, United States Code, other than the Government Accountability Office; and

(ii) the United States Postal Service and the Postal Regulatory Commission; and

(b) ''order of succession'' means a list of officials by position who shall act as and perform the functions and duties of the office of the head of the agency in the event that the office-holder has died, resigned, or otherwise become unable to perform the functions and duties of the office. ''Order of succession'' does not include any order, rule, memorandum, or other document delegating or partially delegating the authority of an office.

Sec. 3. *Orders of Succession Requiring Presidential Action.*

(a) Each agency for which presidential action is required to establish an order of succession shall draft a proposed order of succession if no such order exists and, not later than 30 days from the date of this order, send such proposed draft order to the Counsel to the President for review and comment.

(b) Each agency described in subsection 3(a) of this order shall send any proposed updates or revisions to the agency's order of succession to the Counsel to the President for review and comment.

(c) Upon completion of the requirements set forth by subsections (a) or (b) of this section with respect to a proposed order, the agency shall submit the proposed order to the Office of Management and Budget in accordance with Executive Order 11030, as amended.

Sec. 4. *Orders of Succession Not Requiring Presidential Action.* (a) Each agency for which presidential action is not required to establish an order of succession because of the agency's existing legal authority shall establish and maintain such order in accordance with applicable law and any applicable guidance issued by the President or the Secretary of Homeland Security, including the laws and guidance regarding continuity plans and programs for the executive branch.

(b) Each agency described in subsection 4(a) of this order shall update and revise its order of succession as necessary. Before implementing any revisions to its order of succession, such agency shall send the proposed revisions to the Counsel to the President for review and comment.

(c) Not later than 30 days from the date of this order, and not later than 7 days from the issuance date of any subsequent final revision

to an existing order of succession, each agency described in subsection 4(a) of this order shall provide a copy of its order of succession to the Counsel to the President, the Assistant to the President for Homeland Security and Counterterrorism, and the Director of the Office of Management and Budget.

Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) Nothing in this order shall be construed to delegate the President's authority under the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, to designate individuals to perform the functions and duties of a vacant office temporarily in an acting capacity.

(c) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
September 11, 2008

[FR Doc. E8–21651
Filed 9–12–08; 11:15 am]
Billing code 3195–01–P

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§§ 1.170–1.300	(869–064–00082–3)	63.00	Apr. 1, 2008
§§ 1.301–1.400	(869–064–00083–1)	50.00	Apr. 1, 2008
§§ 1.401–1.440	(869–064–00084–0)	59.00	Apr. 1, 2008
§§ 1.441–1.500	(869–064–00085–8)	61.00	Apr. 1, 2008
§§ 1.501–1.640	(869–064–00086–6)	52.00	Apr. 1, 2008
§§ 1.641–1.850	(869–064–00087–4)	64.00	Apr. 1, 2008
§§ 1.851–1.907	(869–064–00088–2)	64.00	Apr. 1, 2008
§§ 1.908–1.1000	(869–064–00089–1)	63.00	Apr. 1, 2008
§§ 1.1001–1.1400	(869–064–00090–4)	64.00	Apr. 1, 2008
§§ 1.1401–1.1550	(869–064–00091–2)	61.00	Apr. 1, 2008
§§ 1.1551–End	(869–064–00092–1)	53.00	Apr. 1, 2008
2–29	(869–064–00093–9)	63.00	Apr. 1, 2008
30–39	(869–064–00094–7)	44.00	Apr. 1, 2008
40–49	(869–064–00095–5)	31.00	[6] Apr. 1, 2008
50–299	(869–064–00096–3)	45.00	Apr. 1, 2008

Title	Stock Number	Price	Revision Date
300–499	(869–064–00097–1)	64.00	Apr. 1, 2008
500–599	(869–064–00098–0)	12.00	[5] Apr. 1, 2008
600–End	(869–064–00099–8)	20.00	Apr. 1, 2008
27 Parts:			
1–39	(869–064–00100–5)	35.00	Apr. 1, 2008
40–399	(869–064–00101–3)	67.00	Apr. 1, 2008
400–End	(869–064–00102–1)	21.00	Apr. 1, 2008
28 Parts:			
*0–42	(869–064–00103–0)	64.00	July 1, 2008
43–End	(869–064–00104–8)	63.00	July 1, 2008
29 Parts:			
0–99	(869–062–00105–3)	50.00	[7] July 1, 2007
100–499	(869–062–00106–1)	23.00	July 1, 2007
500–899	(869–062–00107–0)	61.00	[7] July 1, 2007
900–1899	(869–064–00108–1)	39.00	July 1, 2008
1900–1910 (§§ 1900 to 1910.999)	(869–062–00109–6)	61.00	July 1, 2007
1910 (§§ 1910.1000 to end)	(869–062–00110–0)	46.00	July 1, 2007
1911–1925	(869–062–00111–8)	30.00	July 1, 2007
1926	(869–062–00112–6)	50.00	July 1, 2007
1927–End	(869–062–00113–4)	62.00	July 1, 2007
30 Parts:			
1–199	(869–062–00114–2)	57.00	July 1, 2007
200–699	(869–062–00115–1)	50.00	July 1, 2007
700–End	(869–062–00116–9)	58.00	July 1, 2007
31 Parts:			
0–199	(869–062–00117–7)	41.00	July 1, 2007
200–499	(869–062–00118–5)	46.00	July 1, 2007
500–End	(869–064–00119–6)	65.00	July 1, 2008
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–062–00120–7)	61.00	July 1, 2007
*191–399	(869–064–00121–8)	66.00	July 1, 2008
400–629	(869–064–00122–6)	53.00	July 1, 2008
630–699	(869–064–00123–4)	40.00	July 1, 2008
700–799	(869–062–00124–0)	46.00	July 1, 2007
800–End	(869–062–00125–8)	47.00	July 1, 2007
33 Parts:			
1–124	(869–062–00126–6)	57.00	July 1, 2007
125–199	(869–062–00127–4)	61.00	July 1, 2007
200–End	(869–062–00128–2)	57.00	July 1, 2007
34 Parts:			
*1–299	(869–064–00129–3)	53.00	July 1, 2008
*300–399	(869–064–00130–7)	43.00	July 1, 2008
400–End & 35	(869–062–00131–2)	61.00	July 1, 2007
36 Parts:			
1–199	(869–062–00132–1)	37.00	July 1, 2007
200–299	(869–062–00133–9)	37.00	July 1, 2007
300–End	(869–062–00134–7)	61.00	July 1, 2007
37	(869–062–00135–5)	58.00	July 1, 2007
38 Parts:			
0–17	(869–062–00136–3)	60.00	July 1, 2007
18–End	(869–062–00137–1)	62.00	July 1, 2007
39	(869–064–00138–2)	45.00	July 1, 2008
40 Parts:			
1–49	(869–062–00139–8)	60.00	July 1, 2007
50–51	(869–064–00140–4)	48.00	July 1, 2008
52 (52.01–52.1018)	(869–062–00141–0)	60.00	July 1, 2007
52 (52.1019–End)	(869–062–00142–8)	64.00	July 1, 2007
53–59	(869–064–00143–9)	34.00	July 1, 2008
60 (60.1–End)	(869–062–00144–4)	58.00	July 1, 2007
60 (Apps)	(869–062–00145–2)	57.00	July 1, 2007
61–62	(869–062–00146–1)	45.00	July 1, 2007
*63 (63.1–63.599)	(869–064–00147–1)	61.00	July 1, 2008
63 (63.600–63.1199)	(869–062–00148–7)	50.00	July 1, 2007
*63 (63.1200–63.1439)	(869–064–00149–8)	53.00	July 1, 2008
63 (63.1440–63.6175)	(869–062–00150–9)	32.00	July 1, 2007
63 (63.6580–63.8830)	(869–062–00151–7)	32.00	July 1, 2007
63 (63.8980–End)	(869–064–00152–8)	38.00	July 1, 2008
*64–71	(869–064–00153–6)	32.00	July 1, 2008
72–80	(869–062–00154–1)	62.00	July 1, 2007
*81–84	(869–064–00155–2)	53.00	July 1, 2008
*85–86 (85–86.599–99)	(869–064–00156–1)	64.00	July 1, 2008
86 (86.600–1–End)	(869–062–00157–6)	61.00	July 1, 2007
87–99	(869–062–00158–4)	60.00	July 1, 2007
*100–135	(869–064–00159–5)	48.00	July 1, 2008
136–149	(869–062–00160–6)	61.00	July 1, 2007
150–189	(869–062–00161–4)	50.00	July 1, 2007
190–259	(869–062–00162–2)	39.00	[7] July 1, 2007
260–265	(869–064–00163–3)	53.00	July 1, 2008
266–299	(869–062–00164–9)	50.00	July 1, 2007
300–399	(869–062–00165–7)	42.00	July 1, 2007
400–424	(869–062–00166–5)	56.00	[7] July 1, 2007
425–699	(869–062–00167–3)	61.00	July 1, 2007
700–789	(869–062–00168–1)	61.00	July 1, 2007
790–End	(869–062–00169–0)	61.00	July 1, 2007
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–062–00170–3)	24.00	July 1, 2007
101	(869–062–00171–1)	21.00	July 1, 2007
102–200	(869–064–00172–2)	56.00	July 1, 2008
201–End	(869–062–00173–8)	24.00	July 1, 2007
42 Parts:			
1–399	(869–062–00174–6)	61.00	Oct. 1, 2007
400–413	(869–062–00175–4)	32.00	Oct. 1, 2007
414–429	(869–062–00176–2)	32.00	Oct. 1, 2007
430–End	(869–062–00177–1)	64.00	Oct. 1, 2007
43 Parts:			
1–999	(869–062–00178–9)	56.00	Oct. 1, 2007
1000–end	(869–062–00179–7)	62.00	Oct. 1, 2007
44	(869–062–00180–1)	50.00	Oct. 1, 2007
45 Parts:			
1–199	(869–062–00181–9)	60.00	Oct. 1, 2007
200–499	(869–060–00182–7)	34.00	[9] Oct. 1, 2007
500–1199	(869–062–00183–5)	56.00	Oct. 1, 2007
1200–End	(869–062–00184–3)	61.00	Oct. 1, 2007
46 Parts:			
1–40	(869–062–00185–1)	46.00	Oct. 1, 2007
41–69	(869–062–00186–0)	39.00	Oct. 1, 2007
70–89	(869–062–00187–8)	14.00	Oct. 1, 2007
90–139	(869–062–00188–6)	44.00	Oct. 1, 2007
140–155	(869–062–00189–4)	25.00	Oct. 1, 2007
156–165	(869–062–00190–8)	34.00	Oct. 1, 2007
166–199	(869–062–00191–6)	46.00	Oct. 1, 2007
200–499	(869–062–00192–4)	40.00	Oct. 1, 2007
500–End	(869–062–00193–2)	25.00	Oct. 1, 2007
47 Parts:			
0–19	(869–062–00194–1)	61.00	Oct. 1, 2007
20–39	(869–062–00195–9)	46.00	Oct. 1, 2007
40–69	(869–062–00196–7)	40.00	Oct. 1, 2007
70–79	(869–062–00197–5)	61.00	Oct. 1, 2007
80–End	(869–062–00198–3)	61.00	Oct. 1, 2007
48 Chapters:			
1 (Parts 1–51)	(869–062–00199–1)	63.00	Oct. 1, 2007
1 (Parts 52–99)	(869–062–00200–9)	49.00	Oct. 1, 2007
2 (Parts 201–299)	(869–062–00201–7)	50.00	Oct. 1, 2007
3–6	(869–062–00202–5)	34.00	Oct. 1, 2007

Title	Stock Number	Price	Revision Date
7–14	(869–062–00203–3)	56.00	Oct. 1, 2007
15–28	(869–062–00204–1)	47.00	Oct. 1, 2007
29–End	(869–062–00205–0)	47.00	Oct. 1, 2007
49 Parts:			
1–99	(869–062–00206–8)	60.00	Oct. 1, 2007
100–185	(869–062–00207–6)	63.00	Oct. 1, 2007
186–199	(869–062–00208–4)	23.00	Oct. 1, 2007
200–299	(869–062–00208–1)	32.00	Oct. 1, 2007
300–399	(869–062–00210–6)	32.00	Oct. 1, 2007
400–599	(869–062–00210–3)	64.00	Oct. 1, 2007
600–999	(869–062–00212–2)	19.00	Oct. 1, 2007
1000–1199	(869–062–00213–1)	28.00	Oct. 1, 2007
1200–End	(869–062–00214–9)	34.00	Oct. 1, 2007
50 Parts:			
1–16	(869–062–00215–7)	11.00	Oct. 1, 2007
17.1–17.95(b)	(869–062–00216–5)	32.00	Oct. 1, 2007
17.95(c)–end	(869–062–00217–3)	32.00	Oct. 1, 2007
17.96–17.99(h)	(869–062–00218–1)	61.00	Oct. 1, 2007
17.99(i)–end and 17.100–end	(869–062–00219–0)	47.00	[8] Oct. 1, 2007
18–199	(869–062–00226–3)	50.00	Oct. 1, 2007
200–599	(869–062–00221–1)	45.00	Oct. 1, 2007
600–659	(869–062–00222–0)	31.00	Oct. 1, 2007
660–End	(869–062–00223–8)	31.00	Oct. 1, 2007
CFR Index and Findings Aids	(869–064–00050–5)	65.00	Jan. 1, 2008
Complete 2008 CFR set		1,499.00	2008
Microfiche CFR Edition:			
Subscription (mailed as issued)		406.00	2008
Individual copies		4.00	2008
Complete set (one-time mailing)		332.00	2007
Complete set (one-time mailing)		332.00	2006

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2007. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2006, through July 1, 2007. The CFR volume issued as of July 1, 2006 should be retained.

[8] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2007. The CFR volume issued as of October 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2006, through October 1, 2007. The CFR volume issued as of October 1, 2006 should be retained.