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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register

Vol. 72, No. 180

Tuesday, September 18, 2007

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2007–0108]

Add the Republic of Georgia to List of Regions Where African Swine Fever Exists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations concerning the importation of animals and animal products by adding the Republic of Georgia to the list of regions where African swine fever exists. We are taking this action because outbreaks of African swine fever have been confirmed in various locations throughout Georgia. This action will restrict the importation of pork and pork products into the United States from Georgia and is necessary to prevent the introduction of African swine fever into the United States.

DATES: This interim rule is effective retroactively to June 5, 2007. We will consider all comments that we receive on or before November 19, 2007.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2007–0108 to submit or view public comments and to view supporting and related materials available electronically. 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.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0108, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0108.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Javier Vargas, Animal Scientist, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–0756.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including rinderpest, foot-and-mouth disease, bovine spongiform encephalopathy, swine vesicular disease, classical swine fever, and African swine fever (ASF). These are dangerous and destructive communicable diseases of ruminants and swine.

Section 94.8 of the regulations lists regions of the world where ASF exists or is reasonably believed to exist and imposes restrictions on the importation of pork and pork products into the United States from those regions.

On June 5, 2007, the Republic of Georgia reported to the World Organization for Animal Health (OIE) 11 outbreaks of ASF in various areas throughout the country. The source of the outbreak is unknown. Therefore, in order to prevent the introduction of ASF into the United States, we are amending the regulations by adding Georgia to the list of regions in § 94.8 where ASF exists or is reasonably believed to exist. As a result of this action, the importation into the United States of pork or pork products from Georgia will be restricted. We are imposing this restriction retroactively to June 5, 2007, which is that the presence of ASF in Georgia was confirmed.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the introduction of ASF into the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This interim rule amends the regulations by adding the Republic of Georgia to the list of regions in which ASF exists. This action is necessary on an emergency basis to prevent the introduction of ASF into the United States.

The rule will restrict the importation of pork and pork products from Georgia. Georgia is a net importer of swine and swine products. The country's exports of pork products represent less than 0.1 percent of the world export of these products. The United States, Canada, and Mexico did not import any pork or pork products from Georgia during the period of January 2006 through March 2007. Since no pork or pork products have been imported into the United States from Georgia during this time period, it is unlikely that this interim rule will have any substantial effects on trade, or on large or small businesses.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has retroactive effect to June 5, 2007; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 94.8 [Amended].

■ 2. In § 94.8, the introductory text is amended by adding the word ''Georgia,'' after the word ''Cuba.''

Done in Washington, DC, this 12th day of September 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–18315 Filed 9–17–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27864; Directorate Identifier 2007–CE–038–AD; Amendment 39–15161; AD 2007–17–03]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Corporation, Ltd. Model 750XL Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2007–17–03, which was published in the **Federal Register** on August 21, 2007 (72 FR 46541), and applies to certain Pacific Aerospace Corporation Ltd Model 750XL airplanes. AD 2007–17–03 requires inspecting the inboard end of the rear spar for security of the blind rivets, inspecting the radii of the rear spar upper and lower flanges for cracking, inspecting the aft flange of the inboard rib for cracking, replacing the rear spar if cracks are found in any of the inspections, and replacing rear spar blind rivets with bolts or rivets. The paragraph following the section heading Materials Incorporated by Reference does not have a paragraph designator. This document corrects that paragraph by inserting the paragraph designator ''(i)'' preceding the paragraph text.

DATES: The effective date of this AD (2007–17–03) remains September 25, 2007.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

On August 8, 2007, the FAA issued AD 2007–17–03, Amendment 39–15161 (72 FR 46541, August 21, 2007), which applies to certain Pacific Aerospace Corporation Ltd Model 750XL airplanes. AD 2007–17–03 requires you to inspect the inboard end of the rear spar for security of the blind rivets, inspecting the radii of the rear spar upper and lower flanges for cracking, inspecting the aft flange of the inboard rib for cracking, replacing the rear spar if cracks are found in any of the inspections, and replacing rear spar blind rivets with bolts or rivets. The paragraph following the section heading Materials Incorporated by Reference does not have a paragraph designator. This document corrects that paragraph by inserting the paragraph designator ''(i)'' preceding the paragraph text.

Need for the Correction

This correction is needed to specify the paragraph designator for the paragraph that follows the Materials Incorporated by Reference section heading.

Correction of Publication

■ Accordingly, the publication of August 21, 2007 (72 FR 46541), of Amendment 39–15161; AD 2007–17–03 which was the subject of FR Doc. E7–15978, is corrected as follows:

§ 39.13 [Corrected]

■ On page 46542, in the second column, at the beginning of the paragraph following the Materials Incorporated by Reference section heading, the paragraph designator (i), indented two spaces, precedes the paragraph.

Action is taken herein to correct this reference in AD 2007–17–03 and to add this AD correction to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains September 25, 2007.

Issued in Kansas City, Missouri, on September 10, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–18136 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28372; Directorate Identifier 2007–NM–080–AD; Amendment 39–15194; AD 2007–19–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300F4–605R and A300F4–622R Airplanes

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

ACTION: Final rule.

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

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

Further to cases of parking brake loss at the gate, a pressure switch system had been introduced on some A300–600 aircraft. The aim of this modification was to recover pedals braking authority if parking brake is not efficient, without having to set the parking brake handle to OFF.

However, it appears that in case of failure of the pressure switch system, there is the risk of double (normal and alternate) pressurization of the brakes potentially leading to undetected residual braking, which may lead to a loss of performances of the aircraft at Take-Off.

The loss of performance could result in runway overrun or impact with obstacles or terrain during takeoff. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective October 23, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 23, 2007.

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

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 11, 2007 (72 FR 32025). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Further to cases of parking brake loss at the gate, a pressure switch system had been introduced on some A300–600 aircraft. The aim of this modification was to recover pedals braking authority if parking brake is not efficient, without having to set the parking brake handle to OFF.

However, it appears that in case of failure of the pressure switch system, there is the risk of double (normal and alternate) pressurization of the brakes potentially leading to undetected residual braking, which may lead to a loss of performances of the aircraft at Take-Off.

This new AD requires accomplishment of a wiring modification that will inhibit the effect of modifications 12088 and 12403.

The loss of performance could result in runway overrun or impact with obstacles or terrain during takeoff. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this AD affects about 51 products of U.S. registry. We also estimate that it takes about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Where the service information lists required labor costs that are covered under warranty at the operator's agreed in-house warranty labor rate, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD on U.S. operators to be $12,240, or $240 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–19–04 Airbus: Amendment 39–15194. Docket No. FAA–2007–28372; Directorate Identifier 2007–NM–080–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 23, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300F4–605R and A300F4–622R airplanes; certificated in any category; all serial numbers; on which Airbus Modifications 12088 and 12403 have been embodied during production, or which incorporated Airbus Service Bulletin A300–32–6085 in service, except airplanes on which Airbus Modification 12618 has been embodied during production, or which incorporated Airbus Service Bulletin A300–32–6100 in service.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

Reason

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

Further to cases of parking brake loss at the gate, a pressure switch system had been introduced on some A300–600 aircraft. The aim of this modification was to recover pedals braking authority if parking brake is not efficient, without having to set the parking brake handle to OFF.

However, it appears that in case of failure of the pressure switch system, there is the risk of double (normal and alternate) pressurization of the brakes potentially leading to undetected residual braking, which may lead to a loss of performances of the aircraft at Take-Off.

This new AD requires accomplishment of a wiring modification that will inhibit the effect of modifications 12088 and 12403.

The loss of performance could result in runway overrun or impact with obstacles or terrain during takeoff.

Actions and Compliance

(f) Within 3 months after the effective date of this AD unless already done: Modify the wiring in the right electronics rack 90VU (volt unit), in accordance with the instructions of Airbus Service Bulletin A300–32–6100, dated September 18, 2006.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2007–0068, dated March 14, 2007; and Airbus Service Bulletin A300–32–6100, dated September 18, 2006; for related information.

Material Incorporated by Reference

(i) You must use Airbus Service Bulletin A300–32–6100, dated September 18, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

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

Issued in Renton, Washington, on August 31, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–18050 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28308; Directorate Identifier 2007–NM–016–AD; Amendment 39–15195; AD 2007–19–05]

RIN 2120–AA64

Airworthiness Directives; Hawker Beechcraft Model 400, 400A, and 400T Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Hawker Beechcraft Model 400, 400A, and 400T series airplanes. This AD requires modifying the attachment fasteners on the engine cowling panels. This AD results from several reports of loose attachment fasteners found on the engine cowling panels, and subsequently the panels either peeling back or separating from the airplane during flight. We are issuing this AD to prevent failure of the attachment fasteners on the engine cowling panels, which could result in separation of a panel from the airplane, and consequent damage to airplane structure. These conditions could adversely affect continued safe flight and landing of the airplane, or cause injury to people or damage to property on the ground.

DATES: This AD becomes effective October 23, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 23, 2007.

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

Contact Hawker Beechcraft Corporation, 9709 East Central, Wichita, Kansas 67206, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: William Griffith, Aerospace Engineer, Airframe and Services Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4116; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Raytheon (Beech) Model 400, 400A, and 400T series airplanes. That NPRM was published in the **Federal Register** on May 29, 2007 (72 FR 29446). That NPRM proposed to require modifying the attachment fasteners on the engine cowling panels.

Comments

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

Explanation of Change to Applicability

We have revised the applicability of the existing AD to match the most recent type certificate data sheet for the affected models.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 757 airplanes of the affected design in the worldwide fleet. This AD affects about 575 airplanes of U.S. registry. The required actions take about 10 work hours per airplane, at an average labor rate of $80 per work hour. Required parts cost about $400 per airplane. Based on these figures, the estimated cost of this AD for U.S. operators is $690,000, or $1,200 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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 regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–19–05 Hawker Beechcraft Corporation (Formerly Raytheon Aircraft Company): Amendment 39–15195. Docket No. FAA–2007–28308; Directorate Identifier 2007–NM–016–AD.

Effective Date

(a) This AD becomes effective October 23, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Hawker Beechcraft Model 400, 400A, and 400T series airplanes, certificated in any category; as identified in Raytheon Service Bulletin SB 54–3788, dated December 2006.

Unsafe Condition

(d) This AD results from several reports of loose attachment fasteners found on the engine cowling panels, and subsequently the panels either peeling back or separating from the airplane during flight. We are issuing this AD to prevent failure of the attachment fasteners on the engine cowling panels, which could result in separation of a panel from the airplane, and consequent damage to airplane structure. These conditions could adversely affect continued safe flight and landing of the airplane, or cause injury to people or damage to property on the ground.

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.

Modification

(f) Within 200 flight hours after the effective date of this AD: Modify the attachment fasteners on the engine cowling panels by doing all the actions in accordance with the Accomplishment Instructions of Raytheon Service Bulletin SB 54–3788, dated December 2006.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Wichita Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Material Incorporated by Reference

(h) You must use Raytheon Service Bulletin SB 54–3788, dated December 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Hawker Beechcraft Corporation, 9709 East Central, Wichita, Kansas 67206, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on August 31, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–18048 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25239; Directorate Identifier 2006–NE–23–AD; Amendment 39–15196; AD 2007–19–06]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Aircraft Engine Group (GEAE) CF6–45A Series, CF6–50A, CF6–50C Series and CF6–50E Series Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for GEAE CF6–45A, –45A2, –50A, –50C, –50CA, –50C1, –50C2, –50C2B, –50C2D, –50C2F, –50C2R, –50E, –50E1, – 50E2, and –50E2B turbofan engines. This AD requires replacing the compressor discharge pressure (CDP) restoring spring assembly on certain main engine controls (MECs) or re-marking MECs that already incorporate GEAE Service Bulletin (SB) No. CF6–50 S/B 73–0119, dated March 21, 2005. This AD results from reports of five events involving fractured CDP restoring spring assemblies. We are issuing this AD to prevent loss of engine thrust control that could lead to loss of control of the airplane.

DATES: This AD becomes effective October 23, 2007. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of October 23, 2007.

ADDRESSES: You can get the service information identified in this AD from General Electric Company via GE–Aviation, Attn: Distributions, 111 Merchant St., Room 230, Cincinnati, Ohio 45246; telephone (513) 552–3272; fax (513) 552–3329.

The Docket Operations office is located at U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7773; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to GEAE CF6–45A, –45A2, –50A, –50C, –50CA, –50C1, –50C2, –50C2B, –50C2D, –50C2F, –50C2R, –50E, –50E1, –50E2, and –50E2B turbofan engines. We published the proposed AD in the **Federal Register** on May 31, 2007 (74 FR 30300). That action proposed to require replacing the CDP restoring spring assembly on certain MECs and re-marking MECs that already incorporate GEAE SB No. CF6–50 S/B 73–0119, dated March 21, 2005 or GEAE SB No. CF6–50 S/B 73–0119, Revision 01, dated May 26, 2006.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.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. The commenters support the proposal.

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.

Costs of Compliance

We estimate that this proposed AD would affect 756 GEAE CF6–45A, –50C, and –50E series turbofan engines installed on airplanes of U.S. registry. We also estimate that it would take about 40 work-hours per engine to perform the proposed actions, and that the average labor rate is $80 per work-hour. Required parts would cost about $1,787 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $3,770,172.

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, Incorporation by reference, 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:

2007–19–06 General Electric Company Aircraft Engine Group: Amendment 39–15196. Docket No. FAA–2006–25239; Directorate Identifier 2006–NE–23–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 23, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company Aircraft Engine Group (GEAE) CF6–45A, 45A2, –50A, –50C, –50CA, –50C1, –50C2, –50C2B, –50C2D, –50C2F, –50C2R, –50E, –50E1, –50E2, and –50E2B turbofan engines that have a main engine control (MEC) with a part number (P/N) specified in Table 1 of this AD installed. These engines are installed on, but not limited to, Airbus A300 series airplanes, McDonnell Douglas DC–10, KC–10, and MD–10 series airplanes, and Boeing 747 series airplanes.

TABLE 1.—AFFECTED WOODWARD AND GEAE P/NS FOR MECS BY ENGINE MODEL SERIES

Engine model series	Woodward P/N	GEAE P/N
CF6–50A, –50C, –50CA, –50C1, –50C2, –50C2B, –50C2D, –50C2F, –50C2R.	8062–275	9070M55P42
	8062–279	9070M55P44
	8062–287	9070M55P49
	8062–289	9070M55P51
	8062–819	9070M55P101
	8062–822	9070M55P102
	8062–824	9070M55P103
	8062–823	9070M55P104
	8062–826	9070M55P105
	8062–827	9070M55P106
	8062–828	9070M55P107
	8062–829	9070M55P108
CF6–45A, –45A2, –50E, –50E1, –50E2, –50E2B	8062–276	9187M29P10
	8062–280	9187M29P11
	8062–290	9187M29P14
	8062–291	9187M29P15
	8062–817	9187M29P100
	8062–820	9187M29P101
	8062–896	9187M29P22
	8062–897	9187M29P23
	8062–898	9187M29P20
	8062–899	9187M29P21

(d) This AD results from reports of five events involving fractured compressor discharge pressure (CDP) restoring spring assembly. We are issuing this AD to prevent loss of engine thrust control that could lead to loss of control of the airplane.

Compliance

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

Replacing the CDP Restoring Spring Assembly on CF6–50A Engines and –50C Series Engines

(f) For CF6–50A model engines and –50C series engines that have an MEC that has a P/N listed in Table 1 of this AD, replace the CDP restoring spring assembly as follows in Table 2 of this AD:

TABLE 2.—COMPLIANCE SCHEDULE FOR CF6–50A AND –50C ENGINES

If the CDP restoring spring assembly in your MEC	Then	By	Use
(1) Was already replaced using GEAE CF6–50 S/B 73–0119, dated March 21, 2005.	Re-mark the MEC	The next time the MEC is routed for repair such as the next MEC shop visit.	Paragraph 3.A. of the Accomplishment Instructions of SB No. CF6–50 S/B 73–0119, Revision 02, dated March 9, 2007.
(2) Was already replaced within 10,000 or fewer hours time-in-service (TIS) before the effective date of this AD, and the replacement spring assembly (P/N 3018–248) had zero hours TIS.	Replace the spring assembly and remark the MEC.	The first MEC shop visit or engine shop visit after the MEC exceeds 10,000 hours TIS, but do not exceed 20,000 hours TIS.	Paragraph 3.A. of the Accomplishment Instructions of SB No. CF6–50 S/B 73–0119, Revision 02, dated March 9, 2007.
(3) Has more then 10,000 hours TIS.	Replace the spring assembly and remark the MEC.	The next MEC shop visit or engine shop visit whichever occurs first.	Paragraph 3.A. of the Accomplishment Instructions of SB No. CF6–50 S/B 73–0119, Revision 02, dated March 9, 2007.

Replacing the CDP Restoring Spring Assembly on CF6–45A and –50E Series Engines

(g) For CF6–45A series and –50E series engines that have an MEC that has a P/N listed in Table 1 of this AD, replace the CDP restoring spring assembly as follows in Table 3 of this AD:

TABLE 3.—COMPLIANCE SCHEDULE FOR CF6–45A AND –50E ENGINES

If the CDP restoring spring assembly in your MEC	Then	By	Use
(1) Was already replaced within 10,000 or fewer hours time-in-service (TIS) before the effective date of this AD, and the replacement spring assembly (P/N 3018–248) had zero hours TIS.	Replace the spring assembly and remark the MEC.	The first MEC shop visit or engine shop visit after the MEC exceeds 10,000 hours TIS, but do not exceed 20,000 hours TIS.	Paragraph 3.A. of the Accomplishment Instructions of SB No. CF6–50 S/B 73–0120, dated March 21, 2007.
(2) Has more then 10,000 hours TIS.	Replace the spring assembly and remark the MEC.	The next MEC shop visit or engine shop visit whichever occurs first.	Paragraph 3.A. of the Accomplishment Instructions of SB No. CF6–50 S/B 73–0120, dated March 21, 2007.

Definition

(h) For the purpose of this AD, a shop visit is induction of the engine or MEC into the shop for any cause.

Installation Prohibition

(i) After the effective date of the AD, do not install an MEC that:

(1) Has not complied with SB No. CF6–50 S/B 73–0119, Revision 02, dated March 9, 2007 or earlier revision, or SB No. CF6–50 S/B 73–0120, dated March 21, 2007, or

(2) Has not had the CDP restoring spring replaced with a spring assembly, P/N 3018–248, or FAA-approved equivalent spring assembly, within the previous 10,000 hours of MEC operation.

Alternative Methods of Compliance

(j) The Manager, Engine 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.

Related Information

(k) None.

(l) Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7773; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(m) You must use the service information specified in Table 4 to perform the replacements required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 4 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact General Electric Company via GE–Aviation, Attn: Distributions, 111 Merchant St., Room 230, Cincinnati, Ohio 45246; telephone (513) 552–3272; fax (513) 552–3329, for a copy of this service information. You may review copies at the FAA, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

TABLE 4.—INCORPORATION BY REFERENCE

Service Bulletin No.	Page	Revision	Date
CF6–50 S/B 73–0119 Total Pages—11	ALL	02	March 9, 2007.
CF6–50 S/B 73–0120 Total Pages—11	ALL	Original	March 21, 2007.

Issued in Burlington, Massachusetts, on September 7, 2007.

Peter A. White,

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

[FR Doc. E7–18134 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27955; Directorate Identifier 2007–NE–15–AD; Amendment 39–15201; AD 2007–19–10]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Trent 500 Series Turbofan Engines

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) provided by an aviation authority of the United Kingdom (UK) to identify and correct an unsafe condition on Rolls-Royce plc RB211 Trent 500 series turbofan engines. The MCAI states the following:

This AD requires replacement of Intermediate Pressure Compressor (IP Compressor) Drums (Part Number FK30102) of nine part serial numbers. This action is necessary following the discovery of strain induced porosity in a Trent 500 IP Compressor Drum forging. Engineering assessment concluded that the problem is caused by the forging process and it is

believed that this is a batch related occurrence. Nine discs, identified as coming from the same batch, could be affected by this problem. Strain induced porosity in the dovetail posts of the stage 1 of the IP Compressor drum could result, in the worst case, in an uncontained loss of 2 IP Compressor stage 1 blades. Thus, the strain induced porosity possibly affecting those nine discs presents a potential unsafe condition.

We are issuing this AD to prevent uncontained loss of IP compressor stage 1 blades.

DATES: This AD becomes effective October 3, 2007. We must receive comments on this AD by October 3, 2007.

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.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 the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:
Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *Christopher.spinney@faa.gov,* telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued AD 2007–0046, dated February 22, 2007, to correct an unsafe condition for the specified products. The EASA AD states:

> This Airworthiness Directive requires replacement of Intermediate Pressure Compressor (IP Compressor) Drums (Part Number FK30102) of nine part serial numbers. This action is necessary following the discovery of strain induced porosity in a Trent 500 IP Compressor Drum forging. Engineering assessment concluded that the problem is caused by the forging process and it is believed that this is a batch related occurrence. Nine discs, identified as coming from the same batch, could be affected by this problem. Strain induced porosity in the dovetail posts of the stage 1 of the IP Compressor drum could result, in the worst case, in an uncontained loss of 2 IP Compressor stage 1 blades. Thus, the strain induced porosity possibly affecting those nine discs presents a potential unsafe condition.

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

Relevant Service Information

Rolls-Royce plc has issued Mandatory Service Bulletin No. 292 73 2818, Original Issue, dated October 18, 2006, and Update No. 1, dated April 3, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of the UK and is approved for operation in the United States. Pursuant to our bilateral agreement with the UK, they have notified us of the unsafe condition described in the EASA AD and service information referenced above. We are issuing this AD because we evaluated all the information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This AD requires removal of IP Compressor Drums, part number FK30102, serial numbers MW0134967, MW0131219, MW0156891, MW0158192, MW0164840, MW0168864, MW0168190, MW0171399, and KHI00012 from service at the next engine overhaul or before accumulating 2,190 cycles-since-new, whichever occurs first. This AD also requires replacement with a serviceable Drum.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because no airplanes that are registered in the United States use these engines. Therefore, we determined that notice and opportunity for public comment before issuing this AD are unnecessary and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–27955; Directorate Identifier 2007–NE–15–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

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 FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–19–10 Rolls-Royce plc: Amendment 39–15201; Docket No. FAA–2007–27955; Directorate Identifier 2007–NE–15–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 3, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc RB211 Trent 553–61, 556–61, 556B–61, 560–61, 553A2–61, 556A2–61, 556B2–61, and 560A2–61 turbofan engines. These engines are installed on, but not limited to, Airbus A340–500 and 600 series airplanes.

Reason

(d) European Aviation Safety Agency (EASA) AD No. 2007–0046, dated February 22, 2007, states:

This Airworthiness Directive requires replacement of Intermediate Pressure Compressor (IP Compressor) Drums (Part Number FK30102) of nine part serial numbers. This action is necessary following the discovery of strain induced porosity in a Trent 500 IP Compressor Drum forging. Engineering assessment concluded that the problem is caused by the forging process and it is believed that this is a batch related occurrence. Nine discs, identified as coming from the same batch, could be affected by this problem. Strain induced porosity in the dovetail posts of the stage 1 of the IP Compressor drum could result, in the worst case, in an uncontained loss of 2 IP Compressor stage 1 blades. Thus, the strain induced porosity possibly affecting those nine discs presents a potential unsafe condition.

Actions and Compliance

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

(1) Remove the IP Compressor Drums, part number FK30102, serial numbers MW0134967, MW0131219, MW0156891, MW0158192, MW0164840, MW0168864, MW0168190, MW0171399, and KHI00012, from service at the next engine overhaul or before accumulating 2,190 cycles-since-new, whichever occurs first.

(2) Replace these IP Compressor Drums with a serviceable Drum.

Other FAA AD Provisions

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

Related Information

(g) Refer to EASA AD 2007–0046, dated February 22, 2007, and Rolls-Royce plc Alert Service Bulletin No. RB.211–72–AF258, Revision 1, dated March 29, 2007, for related information.

(h) Contact Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *Christopher.spinney@faa.gov,* telephone (781) 238–7175, fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on September 11, 2007.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–18324 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28075; Directorate Identifier 2007–NE–21–AD; Amendment 39–15204; AD 2007–19–13]

RIN 2120–AA64

Airworthiness Directives; B/E Aerospace Skyluxe II (AA2) Passenger Seats

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of the United Kingdom (UK) to identify and correct an unsafe condition on B/E Aerospace Skyluxe II (AA2) passenger seats. The MCAI states the following:

Compliance is required with B/E Aerospace Alert Service Bulletin 25–20–2658 not later than one month from receipt of the bulletin. The Alert Service Bulletin requires inspection and re-orientation of the Hydrolok retaining pin. This action is required because under certain conditions the Hydrolok pin can migrate and disconnect from the seat structure, resulting in the seat back having no rearward restraint and allowing it to rotate aft into the seat or exit pathway behind.

We are issuing this AD to prevent detachment of the seat hydrolok pin, allowing the seat back to rotate aft without restraint, which could lead to occupant injury.

DATES: This AD becomes effective October 3, 2007.

The Director of the Federal Register approved the incorporation by reference of B/E Aerospace Alert Service Bulletin No. 25–20–2658, dated November 12, 2001, listed in the AD as of October 18, 2007.

We must receive comments on this AD by October 18, 2007.

ADDRESSES: The Docket Operations office is located at U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.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.

FOR FURTHER INFORMATION CONTACT: Jeffrey Lee, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *Jeffrey.lee@faa.gov;* telephone (781) 238–7161; fax (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Discussion

The Civil Aviation Authority (CAA), which is the civil aviation authority for the UK, has issued AD 002–11–2001, dated November 27, 2001, to correct an unsafe condition for the specified products. The CAA AD states:

> Compliance is required with B/E Aerospace Alert Service Bulletin 25–20–2658 not later than one month from receipt of the bulletin. The Alert Service Bulletin requires inspection and re-orientation of the Hydrolok retaining pin. This action is required because under certain conditions the Hydrolok pin can migrate and disconnect from the seat structure, resulting in the seat back having no rearward restraint and allowing it to rotate aft into the seat or exit pathway behind.

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

Relevant Service Information

B/E Aerospace has issued Alert Service Bulletin (ASB) No. 25–20–2658, dated November 12, 2001. The actions described in this service information are intended to correct the unsafe condition identified in the CAA AD.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of the UK and is approved for operation in the United States. Pursuant to our bilateral agreement with the UK, they have notified us of the unsafe condition described in the CAA AD and service information referenced above. We are issuing this AD because we evaluated all the information provided by the CAA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This AD requires inspection and re-orientation of the Hydrolok retaining pin.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because B/E Aerospace requires compliance with the ASB within one month of receipt of the ASB. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–28075; Directorate Identifier 2007–NE–21–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–19–13 B/E Aerospace: Amendment 39–15204; Docket No. FAA–2007–28075; Directorate Identifier 2007–NE–21–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 3, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to B/E Aerospace Skyluxe II (AA2) passenger seats. These seats are installed on, but not limited to, Airbus A300, A300–600, A320, A321, A330, and A340 series airplanes; Boeing 737–800 series, 747–200, –300, and –400 series; 767–200 and –300 series; 777–200 and –300 series airplanes; and McDonnell Douglas MD–11 airplanes.

Reason

(d) United Kingdom (UK) Civil Aviation Authority (CAA) AD 002–11–2001, dated November 27, 2001, states:

> Compliance is required with B/E Aerospace Alert Service Bulletin 25–20–2658 not later than one month from receipt of the bulletin. The Alert Service Bulletin requires inspection and re-orientation of the Hydrolok retaining pin. This action is required because under certain conditions the Hydrolok pin can migrate and disconnect from the seat structure, resulting in the seat back having no rearward restraint and allowing it to rotate aft into the seat or exit pathway behind.

We are issuing this AD to prevent detachment of the seat hydrolok pin, allowing the seat back to rotate aft without restraint, which could lead to occupant injury.

Actions and Compliance

(e) Unless already done, do the following actions within 30 days after the effective date of this AD:

(1) Visually inspect and re-orient if necessary, Hydrolok retaining pins.

(2) Use paragraphs 3.1.1 through 3.1.13 of Accomplishment Instructions of B/E Aerospace Alert Service Bulletin No. 25–20–2658, dated November 12, 2001, to perform the inspections and re-orientations.

Other FAA AD Provisions

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

Related Information

(g) Refer to UK CAA AD 002–11–2001, dated November 27, 2001, for related information.

(h) Contact Jeffrey Lee, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *Jeffrey.lee@faa.gov*; telephone (781) 238–7161; fax (781) 238–7170, for more information about this AD.

Material Incorporated by Reference

(i) You must use B/E Aerospace Alert Service Bulletin No. 25–20–2658, dated November 12, 2001, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact B/E Aerospace, (UK) Ltd., Grovebury Road, Leighton Buzzard, Bedfordshire, England LU7 4TB; telephone 44 1525 858 371.

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

Issued in Burlington, Massachusetts, on September 12, 2007.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–18336 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27009; Directorate Identifier 2007–NE–02–AD; Amendment 39–15200; AD 2007–19–09]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Arriel 2B1 Turboshaft Engines

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

ACTION: Final rule; request for comments.

SUMMARY: We are superseding an existing airworthiness directive (AD) by adopting a new AD for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) provided by the aviation authority of France to identify and correct an unsafe condition on Turbomeca Arriel 2B1 turboshaft engines. The MCAI states the following:

This AD is prompted by several reported cases of rupture of the constant delta pressure valve diaphragm on Arriel 2B1 engines, due to the wear of the delta P diaphragm fabric. Rupture can result in the loss of the automatic control mode of the helicopter, accompanied with a deterioration of the behavior of the auxiliary back-up mode (emergency mode). On a single-engine helicopter, the result may be an emergency landing or, at worst, an accident.

This AD supersedes *European Aviation Safety Agency* (EASA) AD 2007–0006 which required the removal from service of all the delta pressure valve diaphragms logging more than 2,000 hours-since-new.

Since issuance of EASA AD 2007–0006, no further case of rupture of the constant delta pressure valve diaphragm has been reported on Arriel 2 engines. However, about 40 additional diaphragms returning from service have been inspected by Turbomeca, and some signs of wear have been detected on diaphragms having logged less than 2,000 hours. Based on the inspection results, it has been decided to decrease this limit from 2,000 hours to 1,500 hours in order to further reduce the probability of delta P diaphragm rupture.

We are issuing this AD to prevent forced autorotation landing, or an accident.

DATES: This AD becomes effective October 3, 2007.

We must receive comments on this AD by October 18, 2007.

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.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 the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *christopher.spinney@faa.gov*; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD 2007–0126, dated May 7, 2007, to correct an unsafe condition for the specified products. The EASA AD states:

This AD is prompted by several reported cases of rupture of the constant delta pressure valve diaphragm on Arriel 2B1 engines, due to the wear of the delta P diaphragm fabric. Rupture can result in the loss of the automatic control mode of the helicopter, accompanied with a deterioration of the behavior of the auxiliary back-up mode (emergency mode). On a single-engine helicopter, the result may be an emergency landing or, at worst, an accident.

This AD supersedes AD EASA AD 2007–0006 which required the removal from service of all the delta pressure valve diaphragms logging more than 2,000 hours-since-new.

Since issuance of EASA AD 2007–0006, no further case of rupture of the constant delta pressure valve diaphragm has been reported on Arriel 2 engines. However, about 40 additional diaphragms returning from service have been inspected by Turbomeca, and some signs of wear have been detected on diaphragms having logged less than 2,000 hours. Based on the inspection results, it has been decided to decrease this limit from 2,000 hours to 1,500 hours in order to further reduce the probability of delta P diaphragm rupture.

The loss of automatic control mode coupled with the deteriorated performance of the backup mode can lead to the inability to continue safe flight, forced autorotation landing, or an accident. You may obtain further information by examining the EASA AD in the AD docket.

This AD supersedes AD 2007–03–14, Amendment 39–14925 (72 FR 4948, February 2, 2007), which we issued in response to EASA AD 2007–0006, dated January 9, 2007.

Relevant Service Information

Turbomeca has issued Mandatory Service Bulletin No. 292 73 2818, Original Issue, dated October 18, 2006, and Update No. 1, dated April 3, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of France and is approved for operation in the United States. Pursuant to our bilateral agreement with France, they have notified us of the unsafe condition described in the EASA AD and service information referenced above. We are issuing this AD because we evaluated all the information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This AD requires initial and repetitive replacement of the HMU with a serviceable HMU every 1,500 hours-in-service.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of the high risk to engines that could experience a ruptured delta P diaphragm with HMUs that have accumulated over 1,500 operating hours. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–27009; Directorate Identifier 2007–NE–02–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

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 FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–14925 (72 FR 4948, February 2, 2007) and by adding the following new AD:

2007–19–09 Turbomeca: Amendment 39–15200; Docket No. FAA–2007–27009; Directorate Identifier 2007–NE–02–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 3, 2007.

Affected ADs

(b) This AD supersedes AD 2007–03–14.

Applicability

(c) This AD applies to Turbomeca Arriel 2B1 turboshaft engines. These engines are installed on, but not limited to, Eurocopter AS 350 B3 and EC 130 B4 helicopters.

Reason

(d) European Aviation Safety Agency (EASA) AD No. 2007–0126, dated May 7, 2007, states:

This AD is prompted by several reported cases of rupture of the constant delta pressure valve diaphragm on Arriel 2B1 engines, due to the wear of the delta P diaphragm fabric. Rupture can result in the loss of the automatic control mode of the helicopter, accompanied with a deterioration of the behavior of the auxiliary back-up mode (emergency mode). On a single-engine helicopter, the result may be an emergency landing or, at worst, an accident.

This AD supersedes EASA AD 2007–0006 which required the removal from service of all the delta pressure valve diaphragms logging more than 2,000 hours-since-new.

Since issuance of EASA AD 2007–0006, no further case of rupture of the constant delta pressure valve diaphragm has been reported on Arriel 2 engines. However, about 40 additional diaphragms returning from service have been inspected by Turbomeca, and some signs of wear have been detected on diaphragms having logged less than 2,000 hours. Based on the inspection results, it has been decided to decrease this limit from 2,000 hours to 1,500 hours in order to further reduce the probability of delta P diaphragm rupture.

The loss of automatic control mode coupled with the deteriorated performance of the backup mode can lead to the inability to continue safe flight, forced autorotation landing, or an accident.

Actions and Compliance

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

(1) Replace the HMU with a serviceable HMU before the HMU accumulates 1,500 hours-since-new, since-last-overhaul, or since-incorporation of Turbomeca Service Bulletin (SB) No. 292 73 2105; or by July 30, 2007, whichever occurs later.

(2) Thereafter, replace HMUs with a serviceable HMU at every 1,500 hours-since-new, since-last-overhaul, or since-incorporation of Turbomeca SB No. 292 73 2105, whichever occurs later.

(3) For the purposes of this AD, a serviceable HMU is an HMU fitted with a new constant delta P diaphragm in accordance with Turbomeca Service Bulletin (MSB) No. 292 73 2818, Original Issue, dated October 18, 2006, or Update No. 1, dated April 3, 2007.

Other FAA AD Provisions

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

Related Information

(g) Contact Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *christopher.spinney@faa.gov;* telephone (781) 238–7175, fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(h) None.

Issued in Burlington, Massachusetts, on September 11, 2007.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–18337 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 135

Service Difficulty Reports; Correcting Amendment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correcting amendment.

SUMMARY: This action removes an erroneous reference to a section that appears in the applicability section of operating requirements for commuter and on-demand operations. The intent of this action is to ensure that the regulations are clear and accurate.

DATES: This amendment becomes effective September 18, 2007.

FOR FURTHER INFORMATION CONTACT: Kim Barnette, Aircraft Maintenance Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 493–4922; facsimile: (202) 267–5115; e-mail: *kim.a.barnette@faa.gov.*

SUPPLEMENTARY INFORMATION: On December 29, 2005, the FAA published a final rule (70 FR 76974) that withdrew a final rule entitled Service Difficulty Reports. As part of that withdrawal, the FAA should have removed any cross-reference to § 135.416 that appeared elsewhere in the regulation, since that section was removed as part of withdrawing the Service Difficulty Reports rule.

To correct this oversight, this action removes references to § 135.416 from paragraphs (a)(1) and (a)(2) of § 135.411.

Technical Amendment

The technical amendment will make a minor editorial correction to § 135.411, paragraphs (a)(1) and (a)(2).

Justification for Immediate Adoption

Because this action removes references to a section that no longer exists, the FAA finds that notice and public comment under 5 U.S.C. 553(b) is unnecessary. For the same reason, the FAA finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective upon publication.

List of Subjects in 14 CFR Part 135

Air taxis, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

■ Accordingly, Title 14 of the Code of Federal Regulations (CFR) part 135 is amended as follows:

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 1. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 45101–45105.

■ 2. Amend § 135.411 by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 135.411 Applicability.

(a) * * *

(1) Aircraft that are type certificated for a passenger seating configuration, excluding any pilot seat, of nine seats or less, shall be maintained under parts 91 and 43 of this chapter and §§ 135.415, 135.417, 135.421 and 135.422. An approved aircraft inspection program may be used under § 135.419.

(2) Aircraft that are type certificated for a passenger seating configuration, excluding any pilot seat, of ten seats or more, shall be maintained under a maintenance program in §§ 135.415, 135.417, 135.423 through 135.443.

* * * * *

Issued in Washington, DC on September 12, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking, Aviation Safety.

[FR Doc. E7–18350 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is amending its regulations to incorporate a procedural alternative that allows a parolee or supervised releasee to initiate the process of accepting a revocation decision without the need of a revocation hearing. This ''advanced consent'' alternative has been used in a pilot project in the District of Columbia since October 2005 and has assisted in the prompt resolution of revocation cases. Through this amendment, the Commission is formalizing the adoption of this variation of the expedited revocation procedure and simplifying the format and language of the rule.

DATES: Effective date: October 18, 2007.

FOR FURTHER INFORMATION CONTACT: Office of General Counsel, U.S. Parole

Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: In 1998 the Parole Commission promulgated a rule establishing the expedited revocation procedure. 63 FR 25769–70 (May 21, 1998). Under this procedure, after a preliminary interview and a probable cause determination, the Commission may offer an alleged parole violator the opportunity to receive a revocation and reparole decision without a revocation hearing. By accepting the Commission's offer and foregoing the revocation hearing, the alleged violator may expedite his transfer from a local jail to a federal institution where vocational, educational, and other prison programs are available. In using this procedure, the Commission saves the costs associated with conducting an in-person hearing.

In October 2005, the Commission began an ''advanced consent'' pilot project at the District of Columbia Central Detention Facility at the suggestion of the Commission's hearing examiners and attorneys from the District of Columbia Public Defender Service. After a parolee or supervised releasee is arrested on a violator warrant issued by the Commission, a Commission hearing examiner conducts a probable cause hearing for the alleged violator at the DC jail within 5 days of the arrest. See 28 CFR 2.101(a). Under the pilot project, the alleged violator may propose to the hearing examiner at the probable cause hearing that he will accept a disposition of the case without a revocation hearing. Usually the alleged violator makes the proposal with the condition that the prison term resulting from the revocation stays at the bottom of the applicable guideline range (see 28 CFR 2.20 and 2.21). The Commission maintains the authority to reject the proposal for any reason, and uses the same substantive criteria in evaluating the case that are described in the present rule at § 2.66, *e.g.*, cases in which the offense severity rating for the alleged violation behavior under the paroling policy guidelines (28 CFR 2.20) is Category Two or less (Categories One and Two are the least serious offense ratings in the guidelines). Under the advanced consent process, the Commission hoped to expedite revocation proceedings and reduce the number of days the offender would be incarcerated at the DC jail before transferring to a federal facility where more programs would be available to the offender.

The results of the advanced consent program show that this procedure does expedite the resolution of less serious parole and supervised release revocation cases. For the period from January 1, 2006 to June 30, 2007, the Commission made 2,607 revocation decisions for violators in the District of Columbia. Of this number, 1048 cases (40%) were decided using the advanced consent procedure. The average processing time of these 1048 cases was 44 days from the date the violator was arrested on a violator warrant to the date of the revocation decision, almost half the time contemplated by the Commission's regulation governing local revocation hearings. See 28 CFR 2.105(c) and 2.218(g) (a revocation decision for a DC violator must be made within 86 days of arrest on a violator warrant).

With the success of the pilot project, the Commission is now amending its rule at § 2.66 to incorporate the advanced consent alternative as a variation of the expedited revocation procedure. No change has been made in the criteria used by the Commission in determining those offenders who may be considered for revocation without the need of a hearing. In applying the amended rule, the Commission will continue to exercise its discretion to conduct a hearing when it deems a hearing to be necessary to protect the public safety, even if the alleged violator's case appears to meet one of the criteria for consideration under § 2.66. The Commission has also edited the rule to ensure that it is clear and easy to read. With the editing of the rule, a conforming amendment is made to the rule on miscellaneous provisions at 28 CFR 2.89. The Commission is publishing the amended rule at § 2.66 as a final rule without seeking public comment because the rule is procedural in nature and does not establish any new substantive criteria for making revocation and reparole decisions.

Implementation

The amended rules will take effect October 18, 2007, and will apply to federal and District of Columbia offenders.

Executive Order 12866

The U.S. Parole Commission has determined that this final rule does not constitute a significant rule within the meaning of Executive Order 12866.

Executive Order 13132

This regulation 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. Under Executive Order 13132, this rule does not have sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

The rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605 (b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to Section 804 (3) (c)) of the Congressional Review Act.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local, or tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Final Rule

■ Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR part 2.

PART 2—[AMENDED]

■ 1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204 (a)(6).

■ 2. Revise § 2.66 to read as follows:

§ 2.66 Revocation decision without hearing.

(a) If the releasee agrees to the decision, the Commission may make a revocation decision without a hearing if—

(1) The alleged violation would be graded no higher than Category Two under the guidelines at § 2.20;

(2) The alleged violation is in any category under the guidelines at § 2.20 and the decision imposes the maximum sanction authorized by law; or

(3) The Commission determines that the releasee has already served sufficient time in custody as a sanction for the violation but that forfeiture of time on parole is necessary to provide an adequate period of supervision.

(b) A releasee who agrees to such a disposition shall indicate such agreement by—

(1) Accepting the decision proposed by the Commission in the Notice of Eligibility for Expedited Revocation Procedure that the Commission sent to the releasee, thereby agreeing that the releasee does not contest the validity of the charge and waives a revocation hearing; or

(2) Offering in writing, before the finding of probable cause or at a probable cause hearing, not to contest the validity of the charge, to waive a revocation hearing, and to accept a decision that is at the bottom of the applicable guideline range as determined by the Commission if the violation would be graded no higher than Category Two under the guidelines at § 2.20, or is the maximum sanction authorized by law.

(c) An alleged violator's agreement under this provision shall not preclude the Commission from taking any action authorized by law or limit the statutory consequences of a revocation decision.

■ 3. Amend § 2.89 by adding an entry for § 2.66 to read as follows:

§ 2.89 Miscellaneous provisions.

* * * * *

2.66 (Revocation Decision Without Hearing)

* * * * *

Dated: August 22, 2007.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. E7–17760 Filed 9–17–07; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The Parole Commission is studying the feasibility of conducting probable cause hearings through videoconferences between an examiner at the Commission's office and alleged parole and supervised release violators in custody at the District of Columbia Central Detention Facility. Therefore, Commission is amending the interim rule allowing hearings by videoconference to include probable cause hearings and to authorize the use of videoconferencing for a sufficient number of such hearings to determine the utility of the procedure.

DATES: Effective date: October 18, 2007. Comments must be received by November 19, 2007.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: Since early 2004, the Parole Commission has been conducting some parole proceedings by videoconference to reduce travel costs and to conserve the time and effort of its hearing examiners. The Commission initiated a pilot project in which examiners conducted some parole release hearings by videoconference between the Commission's office in Maryland and the prisoner's federal institution. The Commission published an interim rule that provided notice that the Commission would be using the videoconference procedure. 69 FR 5273 (Feb. 4, 2004).

Based on the success of that project, the Commission extended the use of videoconferencing to institutional revocation hearings by an interim rule promulgated in April 2005. 70 FR 19262 (Apr. 13, 2005). The Commission holds the revocation hearing at a federal institution when the releasee has admitted the charged violation, waives a local hearing, or has been convicted of a crime that establishes a release violation. The great majority of institutional revocation hearings are still held with the hearing examiner and the releasee together at the federal institution. The Commission's experience with the videoconference procedure in institutional revocation hearings is consistent with the satisfactory experience it has had with videoconferencing in parole release hearings. Releasees, their attorneys, and witnesses have been able to effectively participate in the videoconference hearings with the hearing examiner.

Now the Commission has decided to explore the utility of the videoconference procedure for probable cause hearings held at the District of Columbia Central Detention Facility for parolees and supervised releasees arrested for violations of the conditions of release. Following arrest on a violator warrant and subsequent detention at the DC jail, a releasee is given a hearing with an examiner of the Parole Commission within five days of arrest for the purpose of determining whether probable cause exists for the alleged violation of release. At this hearing, the hearing examiner's primary task is to determine whether any submissions from the releasee and counsel require a different decision as to the evidentiary support for the issuance of a warrant and the continued custody of the releasee. The releasee is usually represented by an attorney from the DC Public Defender Service. Given the limited purpose of the proceeding and the five-day time frame in which the hearing must be held, witnesses are normally not present at a probable cause hearing. The hearing examiner has the delegated authority to make a determination as to the existence of probable cause. At the end of the hearing, if the hearing examiner makes a finding of probable cause, the releasee is normally held in custody for a local revocation hearing. If probable cause is not found, the releasee is discharged from custody and revocation proceedings are terminated. At the local revocation hearing a Commission hearing examiner accepts written and oral submissions from the releasee and counsel, takes testimony from witnesses, and recommends credibility determinations that lead to a final examination of the evidence regarding the alleged violation. All local revocation hearings are held with the hearing examiner in the same room with the releasee, counsel, and any witnesses. With the written report of the hearing by the hearing examiner and the examiner's recommended disposition, the Commission decides if the releasee committed the charged violation, and, if so, whether the Commission should revoke the release.

The Commission held approximately 1700 probable cause hearings in 2006 and sees several benefits in using videoconferencing for these preliminary proceedings. Videoconferencing may allow the hearing examiner to make the best use of the examiner's time and effort during the hearing docket. The progress of a probable cause hearing docket is frequently delayed as releasees are brought in for the hearings by corrections personnel, attorneys and clients meet to discuss some issue regarding the proceedings, or some procedural problem is corrected. If the examiner's attention is not needed during the delay, the examiner may use that time to read the releasee's file that is before the examiner at the Commission's office. (Given the number of probable cause hearings on each docket, it is impractical for an examiner to bring releasee files to the jail for review and use during the hearing docket. The examiner has only a packet of documents concerning the alleged violation.) With the full file readily available, the examiner is in a position to quickly resolve problems such as replacement of a document missing from the releasee's disclosure packet. Moreover, the hearing examiner could promptly respond to questions from the releasee and counsel that may assist them in making a decision whether to initiate a request to the Commission for a disposition of the case without a hearing. These questions may pertain to the calculation of the releasee's salient factor score, the estimate of the releasee's guideline range, or the maximum time remaining on the sentence. Consequently, probable cause hearings by videoconference may offer the possibility of more expeditious decisions regarding the disposition of the charged violation.

The DC Public Defender Service, the Criminal Justice Clinic of the Georgetown University Law Center, and other advocacy programs have already raised concerns that using videoconferencing for probable cause hearings will inhibit the hearing examiner's ability to gauge the credibility of the releasee and witnesses, and will unjustifiably deny the releasee the opportunity to have a face-to-face meeting with a representative of the Commission before release is revoked. Underlying these concerns is the belief that a revocation proceeding should be guided by procedures appropriate to a criminal prosecution. The Commission does not agree with this proposition. Due process does apply to revocation proceedings, but not to the extent that the proceedings are the equivalent of criminal trials. Moreover, the probable cause hearing is only a preliminary proceeding in the revocation process. The full examination of the credibility of the releasee's statements and witnesses' testimony as to the alleged violation takes place at the local revocation hearing, which is held with the hearing examiner face-to-face with the releasee and counsel, and the witnesses.

Videoconferencing has been found to be legally sufficient for a variety of judicial and administrative proceedings. *Pappas* v. *Kentucky Parole Board,* 156 S.W.3d 303 (Ky.Ct.App. 2005) (parole release hearing); *Wilkins* v. *Wilkinson,* 809 N.E.2d 1206 (Ohio Ct. App. 2004) (parole revocation hearing); *United States* v. *Baker,* 45 F.3d 837 (4th Cir. 1995) (involuntary commitment hearing for a mentally ill prisoner). Furthermore, research studies regarding the use of videoconferencing in forensic interviews show that psychiatric evaluations done with videoconferencing are just as reliable as those done with the evaluator and the subject in a face-to-face meeting. See Lexcen, *et al.*, Use of Video Conferencing for Psychiatric and Forensic Evaluations, Psychiatric Services, vol. 57, 713–15 (May 2006). Another study concludes that persons observing witnesses' statements face-to-face with the witnesses, though these ''live'' observers were likely to perceive the witnesses' appearance more favorably than persons observing the statements through video, were no better at determining the truth of the witnesses' statements than the video observers. Landstrom, *et al.*, ''Witnesses Appearing Live Versus on Video: Effects on Observers' Perception, Veracity Assessments and Memory,'' Applied Cognitive Psychology, vol. 19, 913–33 (2005).

The Commission is sensitive to the concern that use of the videoconference procedure may depersonalize the revocation process and might result in the imprisonment of a revoked releasee for a number of months without ever meeting a Commission examiner face-to-face. However, this latter situation would ordinarily occur at the election of a releasee who agrees to waive a revocation hearing, either accepting a sanction offered by the Commission, or offering to accept a designated sanction. If a releasee decides that he wants a face-to-face meeting with a Commission hearing examiner, the releasee can have such a meeting by declining the sanction offered by the Commission or by not offering to accept a designated sanction. The choice rests with the releasee and counsel, who must weigh the benefits of an early disposition of the alleged violation against the loss of a face-to-face meeting with a hearing examiner. The Commission's experience over the last three years has been that the quality of interpersonal exchange among the hearing participants does not appreciably decline with the use of videoconferencing.

Finally, even before the Commission began its pilot project with videoconference hearings in 2004, 22 state parole boards reported using this procedure for parole release hearings and 17 state boards reported using this procedure for parole revocation hearings. See *http://www.apaintl.org/Pub-ParoleBoardSurvey2003.html.* Since 1996, Congress has authorized federal courts to conduct supervised release revocation hearings by videoconference when the releasee is incarcerated and in default on a payment of a fine or restitution. See 18 U.S.C. 3613A. The Commission is hardly breaking new ground in exploring the benefits of videoconferencing for its proceedings.

The Commission is promulgating this rule as an interim rule in order to determine the utility of the videoconference procedure for probable cause hearings and is providing a 60-day period for the public to comment on the use of the procedure for such hearings.

Implementation

The amended rule will take effect October 18, 2007, and will apply to probable cause hearings for District of Columbia parolees and supervised releasees held on or after the effective date.

Executive Order 12866

The U.S. Parole Commission has determined that this interim rule does not constitute a significant rule within the meaning of Executive Order 12866.

Executive Order 13132

This regulation 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. Under Executive Order 13132, this rule does not have sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

The interim rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(3)(c) of the Congressional Review Act.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local, or tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

The Interim Rule

■ Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR part 2.

PART 2—[AMENDED]

■ 1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

■ 2. Revise § 2.25 to read as follows:

§ 2.25 Hearings by videoconference.

The Commission may conduct a parole determination hearing (including a rescission hearing), a probable cause hearing, and an institutional revocation hearing, by a videoconference between the hearing examiner and the prisoner or releasee.

Dated: August 7, 2007.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. E7–17762 Filed 9–17–07; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. CGD05–07–084]

Special Local Regulations for Marine Events; Sunset Lake, Wildwood Crest, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations for the Sunset Lake Hydrofest on Sunset Lake from 8:30 a.m. September 29, 2007 through 5:30 p.m. September 30, 2007. This action is necessary to provide for the safety of life on navigable waters during the event. During the enforcement period, vessel traffic will be restricted in portions of Sunset Lake during the event.

DATES: The regulations in 33 CFR 100.536 will be enforced from 8:30 a.m. September 29, 2007 through 5:30 p.m. September 30, 2007.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Regulatory project manager, Inspections and Investigations Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for giving notice of the enforcement date less than 30 days before the enforcement period goes into effect. Delaying notice of the enforcement date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, support vessels, spectator craft and other vessels transiting the event area. However advance notification of this recurring event is being given to users of Sunset Lake via marine information broadcasts, local notice to mariners, commercial radio stations and area newspapers.

The Coast Guard will enforce the special local regulations for the annual Sunset Lake Hydrofest on Sunset Lake, New Jersey in 33 CFR 100.536 from 8:30 a.m. on September 29, 2007, through 5:30 p.m. September 30, 2007. Annually, the Sunset Lake Hydrofest Association sponsors this event on the waters of Sunset Lake near Wildwood Crest, New Jersey. The event consists of approximately 100 inboard hydroplanes, Jersey speed skiffs and flat-bottom ski boats racing in heats counter-clockwise around an oval racecourse.

Under the provisions of 33 CFR 100.536, except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. Additionally, when authorized by the Patrol Commander to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

This notice is issued under authority of 33 CFR 100.536 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement via the Local Notice to Mariners, marine information broadcasts, local radio stations and area newspapers.

Dated: September 11, 2007.

Neil O. Buschman,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. E7–18354 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 89, and 1039

[EPA–HQ–OAR–2007–0652; FRL–8467–2]

RIN 2060–AO37

Nonroad Diesel Technical Amendments and Tier 3 Technical Relief Provision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this rulemaking, EPA is making certain technical corrections to the rules establishing emission standards for nonroad diesel engines. In addition, we are amending those rules to provide nonroad diesel equipment manufacturers with a production technical relief provision for Tier 3 equipment which is similar to the technical relief provision already available for Tier 4 equipment. Like the Tier 4 provisions, the new Tier 3 technical relief provision deals with a situation where an equipment manufacturer which is not vertically integrated with its engine supplier is unable to complete redesign of the equipment within the time required by rule (here, the Tier 3 rule). To be

eligible, the equipment manufacturer must show both that its inability to furnish a compliant equipment design is due to the engine supplier, and that the equipment manufacturer has exhausted other flexibilities already provided by the Tier 3 rule. The amount of relief under the Tier 3 technical relief provision is somewhat less than is available under the parallel Tier 4 provision, however. The Tier 3 Technical flexibility will apply up to a maximum of an additional 50% of production beyond the original 80% provided by the Tier 3 production flexibility provision. In addition, each grant of Tier 3 technical relief is associated with the likelihood of earlier use of Tier 4 nonroad diesel engines. The rule thus provides that for each one percent of use of Tier 3 technical relief, some percentage of the automatic Tier 4 production flexibility for the same engine power category, and some percentage of potential Tier 4 technical relief, is no longer available. The percentage varies based on the type of engine for which Tier 3 technical relief is granted, the largest Tier 4 ''penalty'' being associated with use of the higher emitting earlier tier engines.

DATES: This direct final rule is effective on November 19, 2007 without further notice, unless we receive adverse comments by October 18, 2007 or receive a request for a public hearing by October 3, 2007. If we receive any significant adverse comments on this direct final rule, or on one or more amendments in this direct final rule, or receive a request for a hearing within the time frame described above, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule, or the provisions of this rule that are the subject of significant adverse comment, will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0652, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Deliveries are only accepted during the Docket's normal hours of operation from 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, except on government holidays. If your Docket requires the submission of multiple copies, please insert the following here:

► Please include a total of copies.

► If the comment involves an ICR that will be submitted to OMB for review and approval under 5 CFR 1320.11, then you must also include the following language pursuant to 1320.11(a): ''In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.''

- *Hand Delivery:* EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation. The EPA/DC Public Reading Room hours of operation will be 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, except on government holidays, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0652. 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 *www.regulations.gov*, or e-mail. The *http://www.regulations.gov* website is an ''anonymous access'' systems, 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.*

Public Hearing: If a public hearing is held, it will be held at 10 a.m. on October 18, 2007 at the EPA NVFEL Office Building, 2000 Traverwood Drive, Ann Arbor, MI, or at an alternate site nearby. Persons interested in presenting oral testimony must contact Zuimdie Guerra, Environmental Protection Agency, Office of Transportation and Air Quality, Assessment and Standards Division, 2000 Traverwood Drive Ann Arbor, MI 48105; e-mail *guerra.zuimdie@epa.gov;* telephone (734) 214–4387; fax number (734) 214–4050, no later than October 15, 2007.

Persons interested in attending the public hearing must also call Zuimdie Guerra to verify the time, date, and location of the hearing. If no one contacts Zuimdie Guerra by October 15, 2007 with a request to present oral testimony at the hearing, the hearing will be canceled.

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 *www.regulations.gov* or in hard copy at the EPA Docket Center (EPA/DC), Air Docket, EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 566–1742 and by facsimile at (202) 566–9744. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Zuimdie Guerra, Environmental Protection Agency, Office of Transportation and Air Quality, Assessment and Standards Division, 2000 Traverwood Drive Ann Arbor, MI 48105; e-mail address *guerra.zuimdie@epa.gov;* telephone

(734) 214–4387; fax number (734) 214–4050.

SUPPLEMENTARY INFORMATION:

I. General Information

EPA is publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse comment. For this reason, we believe that notice and comment procedures are ''unnecessary'', within the meaning of 5 U.S.C. section 553 (b) and that therefore there is good cause to adopt this rule without utilizing such procedures. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to adopt the provisions in this Direct Final Rule if our assumption is incorrect and significant adverse comments are filed. This rule will be effective on November 19, 2007 without further notice unless we receive significant adverse comment by October 18, 2007 or a request for a public hearing by October 3, 2007. If we receive significant adverse comment on one or more distinct provisions of this rule, we will publish a timely withdrawal in the **Federal Register** indicating which provisions are being withdrawn due to adverse comment. We may address all adverse comments in a subsequent final rule based on the proposed rule. We are not planning to 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. Any distinct provisions of today's rulemaking for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other discrete provisions of today's rule.

A. Regulated Entities

This action will affect companies that manufacture and certify nonroad equipment powered by diesel engines in the United States.

Category	NAICS code [a]	Examples of potentially affected entities
U.S. Industry	333111	Farm Machinery and Equipment Manufacturing.
U.S. Industry	333112	Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing.
U.S. Industry	333131	Mining Machinery and Equipment Manufacturing.
U.S. Industry	333132	Oil and Gas Field Machinery and Equipment Manufacturing.
Industry	33341	Ventilation, Heating, Air-Conditioning, and Commercial Refrigeration Equipment Manufacturing.
Industry	33361	Engine, Turbine, and Power Transmission Equipment Manufacturing.
U.S. Industry	333618	Manufacturers of new engines.
U.S. Industry	333911	Pump and Pumping Equipment Manufacturing.
U.S. Industry	333912	Air and Gas Compressor Manufacturing.
Industry	33392	Material Handling Equipment Manufacturing.
U.S. Industry	333924	Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturing.
U.S. Industry	333991	Power-Driven Handtool Manufacturing.
U.S. Industry	333992	Welding and Soldering Equipment Manufacturing.
U.S. Industry	811112	Commercial importers of vehicles and vehicle components.
U.S. Industry	811198	Commercial importers of vehicles and vehicle components.

[a] North American Industry Classification System (NAICS).

To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action as noted in **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 *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:

i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

C. How and to Whom Do I Submit Comments?

You may summit comments on this direct final rule as described in this section. You should note that we are also publishing a notice of proposed rulemaking in the ''Proposed Rules'' section of today's **Federal Register**, which matches the substance of this direct final rule. Your comments on this direct final rule will be considered to also be applicable to that notice of proposed rulemaking. As explained above, if we receive any adverse comments on this direct final rule or receive a request for a hearing within the time frame described above, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule, or the provisions of this rule for which we received adverse comment, will not take effect. We may then take final action in a final rule based on the accompanying proposal. We will not institute a second comment period.

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

i. *EPA dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments directly to EPA Dockets at *http://www.regulations.gov* and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in Docket ID No. EPA–HQ–OAR–2007–0652. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *a-and-r-Docket@epa.gov.* Attention Air Docket ID No. EPA–HQ–OAR–2007–0652. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD–ROM.* You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in **ADDRESSES** above. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send two copies of your comments to: U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460., Attention Docket ID No. EPA–HQ–OAR–2007–0652.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, EPA West Building, 1301 Constitution Avenue, NW., Room: 3334, Mail Code: 2822T, Washington, DC, Attention Air Docket ID No. EPA–HQ–OAR–2007–0652. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.

4. *By Facsimile.* Fax your comments to: (202) 566–9744, Attention Docket ID No. EPA–HQ–OAR–2007–0652.

B. How Can I Get Copies of This Document?

1. *Docket.* EPA has established an official public docket for this action under Air Docket Number EPA–HQ–OAR–2007–0652. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not 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 at the Air Docket in the EPA Docket Center (EPA/DC), EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Eastern Standard Time (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 Air Docket is (202) 566–9744.

2. *Electronic Access.* This direct final rule is available electronically from the EPA Internet Web site. This service is free of charge, except for any cost incurred for internet connectivity. The electronic version of this final rule is made available on the date of publication on the primary web site listed below. The EPA Office of Transportation and Air Quality also publishes **Federal Register** notices and related documents on the secondary web site listed below.

i. *http://www.epa.gov/docs/fedrgstr/EPA–AIR* (either select desired date or use Search features).

ii. *http://www.epa.gov/otaq* (look in What's New or under the specific rulemaking topic).

Please note that due to differences between the software used to develop the documents and the software into which the document may be downloaded, format changes may occur.

II. Summary of Rule

A. EPA is making the following technical amendments to correct a variety of regulatory provisions in the regulations establishing emission standards for nonroad diesel engines:

- *40 CFR 9.1:* Adding the approved information collection for nonroad diesel engines to the summary table in 40 CFR part 9.
- *40 CFR 89.1:* Correcting a typographical error.
- *40 CFR 89.101:* Adding a provision to allow manufacturers to start using the provisions already adopted for Tier 4 engines in the time that Tier 2 or Tier 3 standards continue to apply. We would allow this only to the extent that it does not affect our ability to ensure that manufacturers fully comply with applicable requirements.
- *40 CFR 89.102:* Clarifying the legal status for equipment using engines exempted from current standards under the Transition Program for Equipment Manufacturers. The original language does not clearly exempt the equipment from the otherwise applicable prohibition in § 89.1003, which would be necessary for this whole program.
- *40 CFR 89.102:* Clarifying the limitation of allowances based on engine families. Since these engines are not certified, we clarify that this term relates to the characteristics described for certifying engines in § 89.116.
- *40 CFR 89.102:* Technical relief provision; discussion below in part B.
- *40 CFR 89.108:* Adding a provision for engines to be adjusted outside the normal range of parameter adjustment for applications involving landfill or wellhead gas. We have already adopted this in 40 CFR part 1039 for Tier 4 engines, so this change simply allows manufacturers to implement this provision earlier.

• *40 CFR 89.115:* Requiring manufacturers to name an agent for service in the United States. This simply allows us to ensure that we will have a person in the United States who is able to speak for the company and receive communication regarding any aspect of our effort to certify engines and oversee compliance of certified products.

• *40 CFR 89.205:* Clarifying provisions in the nonroad diesel engine averaging, banking, and trading (ABT) program. The text change is to clarify that these credits are considered to be Tier 2 credits.

• *40 CFR 89.601:* Requiring importers to complete the EPA declaration form before importing engines, and to keep the forms for five years. This amendment simply restates the provisions that are already in place for the U.S. Customs and Border Patrol at 19 CFR 12.74.

• *40 CFR 89.611:* Defining the initial dates for implementing emission standards for nonroad diesel engines below 37 kW. This corrects an earlier oversight in the definition of the scope of the exemption for importing engines that were built before emission standards started to apply.

• *40 CFR 1039.102:* Clarifying provisions in the nonroad diesel engine averaging, banking, and trading (ABT) program.

• *40 CFR 1039.104:* Clarifying provisions in the nonroad diesel engine averaging, banking, and trading (ABT) program. The change corrects an inconsistency with the existing regulatory text that effectively prevents the use of credit-using Tier 3 engines in the initial years of Tier 4 in certain situations.

• *40 CFR 1039.115:* Specifying that crankcase requirements apply throughout an engine's useful life. Without this clarifying language, it is not clear how long this requirement applies, or whether it ever expires. We are also clarifying that the requirements of this section do not apply to engines that are subject to part 1039 requirements, but have been exempted from the emission standards for any reason.

• *40 CFR 1039.125:* Correcting an inadvertent reference to nonroad equipment, which should refer instead to nonroad engines as is clear from the context.

• *40 CFR 1039.135:* Adding clarifying language to describe when an engine's emission control information label is so obscured as to require the equipment manufacturer to apply a separate duplicate label. To be consistent with all other programs for nonroad engines, we specify that a label that is visible during normal maintenance is not obscured. We are also adding a specification that manufacturers keep records of the engine families for which they send duplicate labels.

• *40 CFR 1039.205:* Requiring submission of emission results for each test mode if manufacturers conduct discrete-mode testing. This does not apply for ramped-modal testing. These measurements would be submitted for demonstrating compliance with not-to-exceed standards, so this should not include any additional testing or reporting burden.

• *40 CFR 1039.205:* Requiring manufacturers to name an agent for service in the United States, as described above for § 89.115.

• *40 CFR 1039.205:* Requiring that manufacturers make good-faith estimates of projected production volumes.

• *40 CFR 1039.210:* Clarifying EPA's role in preliminary approvals to describe that we generally would not reverse a decision without new information supporting a different decision.

• *40 CFR 1039.225:* Revising the language to avoid using the term ''new nonroad engine,'' since that defined term is not appropriate for this section.

• *40 CFR 1039.235:* Clarifying that carryover of emission data is possible for engine families that have engine changes in a new model year, as long as there are no changes that might affect emissions.

• *40 CFR 1039.245:* Removing a regulatory provision that was inadvertently included in two separate paragraphs.

• *40 CFR 1039.255:* Narrowing the scope of recordkeeping that would subject an engine manufacturer to an action that could result in the certificate of conformity being revoked or voided, consistent with the similar provisions in our other nonroad engine programs.

• *40 CFR 1039.501:* Clarifying the emission standards to which specific test procedures apply.

• *40 CFR 1039.505:* Clarifying that cycle statistics for discrete-mode testing should be based on a calculation for each mode rather than the sequence of modes.

• *40 CFR 1039.605 and 40 CFR 1039.610:* Amending the regulatory language to address a variety of legal and technical clarifications.

• *40 CFR 1039.625:* Amending the regulatory language to specify the proper engine power lower bound.

• *40 CFR 1039.705:* Amending the description for calculating emission credits to clarify the steps in making the calculation.

• *40 CFR 1039.730:* Revising the description of emission credit calculations to clarify that manufacturers need consider only those families that generate or use emission credits. The emission credit program described in this subpart for these engines is not based on fleet-average compliance.

• *40 CFR 1039.735:* Clarifying the recordkeeping provisions related to emission credits and adding a requirement to keep records as long as the banked credits are considered valid for demonstrating compliance with emission standards.

• *40 CFR 1039.801:* Correcting various definitions to be consistent with more recent rulemakings that used somewhat different wording.

• *40 CFR 1039.810:* Removing the incorporation by reference for the document that defines our rounding conventions, since we are already relying on the same reference established in 40 CFR part 1065.

• *40 CFR 1039.825:* Adding a new section to summarize the information collection requirements in part 1039.

B. This rulemaking also provides nonroad diesel equipment manufacturers that are not vertically integrated with engine suppliers with a production technical relief provision for Tier 3 equipment, modeled on the comparable provision for Tier 4 equipment found in 40 CFR section 1039.625(m).

Only equipment manufacturers who do not make the engines used in the equipment for which technical relief is sought are eligible to apply for technical relief under this provision (since the engine production and equipment production segments of integrated entities would necessarily be in contact and therefore not experience the type of unexpected redesign changes which could warrant technical relief). This applies exclusively to equipment manufacturers as described in section 1039.626. Engine manufacturers and importers thus may not request this relief.

The Tier 4 nonroad diesel rule applies both to diesel engine manufacturers and to equipment manufacturers who install engines made by engine manufacturers. Equipment manufacturers are ultimately responsible for producing nonroad applications which comply with the rule's standards by the rule's compliance date. However, there can be circumstances when equipment manufacturers, through no fault of their own, receive engines from their suppliers too late to meet compliance dates. Although the Tier 4 rule contains a number of equipment manufacturer flexibility provisions which apply automatically (i.e., without any showing of need or any requirement to obtain EPA approval), we were convinced that some additional flexibility was needed to cover circumstances where (a) an equipment manufacturer has exhausted its automatic flexibilities, and (b) it demonstrates to EPA that it cannot comply with the rule because, through no fault of its own, the engine manufacturer failed to deliver a compliant engine to the equipment manufacturer in sufficient time. The provision can be used only as a last resort, so an equipment manufacturer is eligible for relief under the provision only after it exhausts all other flexibility provisions and implementation options. This provision (which we call ''technical relief'' [1]) is explained in the Tier 4 nonroad preamble at 69 FR 39007–008 (June 29, 2004), and (as noted) is codified at section 1039.625(m).

The same issue can arise for producers of Tier 3 nonroad diesel equipment, but the Tier 3 rule does not contain the technical relief provision. Today's rule essentially adds the same technical relief provision to the Tier 3 rule, for the same reasons EPA adopted it in Tier 4.

Tier 3 equipment manufacturers may need this technical relief to address challenges that may occur as engine manufacturers choose to implement technical changes for Tier 3. If an engine manufacturer changes their plan late in the design implementation process, an equipment company with unique or complicated equipment designs could face challenges with their internal redesign process. If the equipment manufacturer has already used its other flexibilities, there thus may be circumstances warranting technical relief for Tier 3 equipment.

There are two principal differences between the Tier 3 technical relief provision, and the existing provision in Tier 4. The first is that the dirtier the substitute engine used if technical relief is granted for Tier 3 equipment, the more Tier 4 flexibilities (both automatically available flexibilities and potential technical relief) the equipment manufacturer must give up (further details are provided below). This encourages earlier use of Tier 4 engines (the cleanest), and ensures that the net emission reductions from Tier 3 and Tier 4 engines remain the greatest achievable, as required by section 213 of the Act. Another difference between the Tier 3 and Tier 4 technical relief provisions is that for the Tier 3 program, relief is limited to 50% of one year's production volume for each power category (as opposed to 70% under Tier 4). This allows for the transitional nature of this program to be realized, while limiting the potential for abuse beyond the need to facilitate a transition to cleaner engines.

However, for the most part, the Tier 3 technical provision mirrors that in Tier 4. As with the parallel provision in Tier 4, this technical relief provision provides a case-by-case exemption granted by EPA to an equipment manufacturer after evaluating the equipment manufacturer's application. Any engine produced utilizing this relief must be appropriately labeled to avoid the introduction into commerce of engines that are not in compliance. A clearly visible label thus must be provided which indicates the regulatory flexibility under which these engines are being produced. The provision applies to equipment that would otherwise be required to use engines certified to the Tier 3 standard (i.e., model year 2006 to 2008 equipment with 37 to 560 kW nonroad diesel engines). The equipment manufacturer would have the burden of demonstrating existence of an extreme technical or engineering hardship condition that is outside its control, i.e. is essentially due to conduct of the (nonintegrated) engine supplier and therefore out of the equipment manufacturer's control. The equipment manufacturer must also demonstrate that it has exercised reasonable due diligence to try to avoid being in the situation.

In order to meet these criteria, the equipment manufacturer needs to provide to EPA documentation, or a written explanation, addressing the following issues:

- Documentation of the technical or engineering problem that was unsolvable within the lead time provided by the Tier 3 rule.
- A description of the normal design cycle between the engine manufacturer and the equipment manufacturer and why that process did not work in this instance.
- All information (such as written specifications, performance data, prototype engines) received by the equipment manufacturer from the engine manufacturer.
- Comparison of the design process for the equipment model for which the exemption is requested versus those for which the exemption is not needed.
- A description of efforts the equipment maker has made to find other compliant engines for the model.
- Documentation that existing flexibilities will be fully utilized before the need for technical relief.

EPA would then decide on a case-by-case basis what percentage, if any, of additional relief (i.e., relief above and beyond that afforded by the automatic percent of production flexibility) would be provided.

Applicability of the Tier 3 technical relief provision is restricted to:

- Up to a maximum of an additional 50% beyond original 80% automatic percent of production technical flexibility (a change from Tier 4, as noted above).
- Full allowance is limited to the first two (2) years of Tier 3.
- Phased-in by power category.
- The Tier 3 automatic flexibility provisions continue to apply for their original seven years or until fully consumed.
- Applies to 56 to 560 kW categories only for the percent of production and only available between 37 to 75 kW for the small volume.

A significant feature of this Tier 3 technical relief provision, which has no counterpart in the Tier 4 provision, is that for every 1% of the equipment production using this relief provision in the Tier 3 timeframe (i.e., equipment that uses engines not conforming to the Tier 3 standard in the Tier 3 timeframe), a percentage of the (automatic) production equipment flexibility allowance for Tier 4 is sacrificed from the comparable Tier 4 power category (i.e., this percent of the otherwise automatic flexibility is no longer available), *and* an additional 1% is sacrificed from any potential Tier 4 technical relief that the Agency may grant for that power category. Please see Table 1. In other words, to utilize the Tier 3 technical relief, the equipment manufacturer must give up some amount of its otherwise automatic Tier 4 flexibility and some portion of its potential Tier 4 technical relief. The Tier 4 percent of production sacrifice is based on the percentage of earlier Tier (e.g., Tier 1 or 2) engines utilized in place of Tier 3 engines. Grant of Tier 3 technical relief thus would be linked to earlier use of Tier 4 engines.

[1] The Tier 4 rule uses the phrase ''technical or engineering hardship'' to describe this provision, and today's rule uses that same language.

TABLE 1.—TECHNICAL RELIEF USAGE

Use of percent of production allowances by equipment manufacturer during implementation of Tier 2 program (percent)	Offsetting deductions required for use of one percent of Tier 3 technical relief	
	Tier 4 percent of production allowance (percent)	Tier 4 technical relief (percent)
0–20	0	1
20–40	1	1
40–60	2	1
60–80	3	1

For example, if you used 45 percent of your production flexibility for equipment using Tier 2 engines of a given power category (i.e. if in the Tier 2 timeframe you used 45% of the total 80% percent of production flexibility for that power category), you must forfeit 2 percent of the (automatic) production flexibility for Tier 4 engines of that power category for every 1 percent technical relief EPA grants for Tier 3 equipment using engines of that power category. You must also forfeit 1 percent of any potential technical relief which could be granted for Tier 4 engines (i.e. for equipment using Tier 4 engines) for every 1 percent technical relief exemption EPA grants for Tier 3 engines. If you use the Tier 3 technical relief allowances for 5 percent of your equipment for two years, you have used a total allowance of 10 percent. Therefore, as shown in Table 1, you must forfeit a total of 20 percent of production flexibility for Tier 4 engines plus 10 percent of any technical relief which could be granted for Tier 4 engines.

The technical relief will be further adjusted based on the sales volume by power category. Because the Tier 3 and Tier 4 rules have different power category ranges, today's rule specifies which power categories in Tier 4 correspond to those in Tier 3 for purposes of this rule. The Tier 3 power categories of 37kW to 75kW and 75kW to 130kW correspond to the Tier 4 power category of 56kW to 130kW. For the Tier 3 equipment in the 37kW to 75kW category, you must only use the sales volume for equipment that uses engines with a rated power greater than 56kW. For example, if you have a Tier 3 piece of equipment that uses a 40kW engine, the sales of the equipment are counted in the Tier 4 power category of 19kW to 56kW. If you have a Tier 3 piece of equipment that uses a 60kW engine, the sales of the equipment are counted in the Tier 4 power category of 56kW to 130kW. The Tier 3 power categories of 130kW to 225kW, 225kW to 450kW and 450kW to 560kW correspond to the Tier 4 power category of 130kW to 560kW. You will need to sum the sales of the Tier 3 power categories that correspond to the Tier 4 power category. Please see Table 2. If EPA grants technical relief, the sum of all the Tier 3 units that are so exempted are divided by the sum of all the Tier 3 units sold in the corresponding Tier 4 power category to determine the percentage of Tier 4 equipment affected.

TABLE 2.—POWER CATEGORIES

Tier 3 power category	Tier 4 power category
37kW to 75kW*	19kW to 56kW.
37kW to 75kW**, 75kW to 130kW.	56kW to 130kW
130kW to 225kW, 225kW to 450kW, 450kW to 560kW.	130kW to 560kW.

*Applies only to use of engines rated between 37kW and 56kW by small volume equipment manufacturers.

**Includes only equipment that uses engines with a rated power greater than 56kW.

For example, if you produce 50 units using Tier 3 technical relief in the range of 130kW to 225kW, and you produce 50 units using Tier 3 technical relief in the range of 225kW to 450kW, and no units are produced in the 450kW to 560kW range, and your overall sales volume for the power ranges of 130kW to 560kW in Tier 3 is 400 units, the amount of Tier 3 technical relief used is 100/400 or 25 percent. Because you forfeit 1 percent of your Tier 4 technical relief for every 1 percent of Tier 3 technical relief used (see Table 1 above), then you will lose 25 percent of your (potential) Tier 4 technical relief in the 130kW to 560kW power range category. If you used 45 percent of your production flexibility for Tier 2 engines, you must forfeit 2 percent of production flexibility for Tier 4 engines for every 1 percent of Tier 3 technical relief. Therefore, you will forfeit 50 percent of your Tier 4 production allowance in the 130kW to 560kW power range category.

Because the technical relief provision was not originally included in the Tier 3 program, we believe it is important to maintain the emission benefits of the Tier 3 rule by requiring a consistent emission trade-off with Tier 4. EPA has already found that the greatest emissions reduction achievable industry-wide for Tier 3 and Tier 4 does not include Tier 3 technical relief plus all of the other Tier 3 and Tier 4 flexibilities. The requirement that certain otherwise-available Tier 4 flexibilities be foregone is designed to ensure protection of the environment, prevent abuse, and encourage earlier introduction of Tier 4 technology. Most basically, as noted above, the linkage is designed to assure that the Tier 3 and Tier 4 rules, in combination, continue to result in the greatest emissions reduction achievable industry-wide, as required by section 213(a) of the Act.

The technical relief for small volume equipment manufacturers is similar to the equipment manufacturer technical relief with the distinction that it applies to small volume equipment manufacturers. The following criteria for small volume apply:

- 100 unit cap.
- Small volume technical relief is only available to the 37 to 56 kW range and the 56 to 75 kW range.

III. 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 (EO)12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Agency believes this action does not impose information collection burden because this rulemaking only provides a technical relief provision for nonroad equipment manufacturers.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

Today's direct final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. Although the rule is subject to the APA, the Agency has invoked the ''good cause'' exemption under 5 U.S.C. 553(b), therefore it is not subject to the notice and comment requirement.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandates for State, local, or Tribal governments or the private sector. The rule imposes no new expenditure or enforceable duty on any State, local or Tribal governments or the private sector, and EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This direct final 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 rulemaking affects only nonroad equipment manufacturers providing them a production technical relief provision. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This direct final rule does not have tribal implications, as specified in Executive Order 13175. This rulemaking affects only nonroad equipment manufacturers providing them a production technical relief provision. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, Section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant, and does not involve decisions on environmental health or safety risks that may disproportionately affect 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 and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus 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 will 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. The technical amendments on this rule do not relax the control measures on sources regulated by the rule and therefore will not cause emissions increases from these sources. The technical relief for the Tier 3 timeframe seeks to compensate for any emissions impact by encouraging earlier use of Tier 4 engines requiring the equipment manufacturer to give up specific Tier 4 flexibilities.

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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of November 19, 2007. 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**.This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Statutory Authority

The statutory authority for this action comes from section 213 of the Clean Air Act as amended (42 U.S.C. 7547). This action is a rulemaking subject to the provisions of the Administrative Procedure Act (see Clean Air Act section 307(d)(1) final sentence).

List of Subjects

40 CFR Part 9

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Vessels, Warranties.

40 CFR Part 89

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Vessels, Warranties.

40 CFR Part 1039

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated: September 6, 2007.

Stephen L. Johnson,

Administrator.

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

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. Section 9.1 is amended in the table by adding a center heading and an entry in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	* *
Control of Emissions from New and In-use Nonroad Compression-Ignition Engines	
1039.825	.2060–0287.
* * * * *	* *

PART 89—CONTROL OF EMISSIONS FROM NEW AND IN-USE NONROAD COMPRESSION-IGNITION ENGINES

■ 3. The authority citation for part 89 is revised to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

■ 4. Section 89.1 is amended by revising paragraph (b)(2) to read as follows:

§ 89.1 Applicability.

* * * * *

(b) * * *

(2) *Mining engines.* This part does not apply for engines used in underground mining equipment and regulated by the Mining Safety and Health Administration (MSHA) in 30 CFR parts 7, 31, 32, 36, 56, 57, 70, and 75.

* * * * *

■ 5. Section 89.2 is amended by adding a definition for ''Designated Enforcement Officer'' in alphabetical order to read as follows:

§ 89.2 Definitions.

* * * * *

Designated Enforcement Officer means the Director, Air Enforcement Division (2242A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460.

* * * * *

Subpart B—[Amended]

■ 6. Section 89.101 is revised to read as follows:

§ 89.101 Applicability.

(a) The requirements of subpart B of this part are applicable to all new nonroad compression-ignition engines subject to the provisions of subpart A of this part 89, pursuant to the schedule delineated in § 89.102.

(b) In a given model year, you may ask us to approve the use of procedures for certification, labeling, reporting, and recordkeeping specified in 40 CFR part 1039 or 1068 instead of the comparable procedures specified in this part 89. We will approve the request as long as it does not prevent us from ensuring that you fully comply with the intent of this part.

■ 7. Section 89.102 is amended by revising paragraphs (d) introductory text, (d)(2)(iii) and (g) and adding paragraphs (i) through (m) to read as follows:

§ 89.102 Effective dates, optional inclusion, flexibility for equipment manufacturers.

* * * * *

(d) Implementation flexibility for equipment and vehicle manufacturers and post-manufacture marinizers. Nonroad equipment and vehicle manufacturers and post-manufacture marinizers may take any of the otherwise prohibited actions identified in § 89.1003(a)(1) and (b)(4) with respect to nonroad equipment and vehicles and marine diesel engines, subject to the requirements of paragraph (e) of this section. The following allowances apply separately to each engine power category subject to standards under § 89.112: * * *

(2) * * *

(iii) Does not use engines from more than one engine family, or, for excepted equipment vehicles, and marine diesel engines using engines not belonging to any engine family, from more than one engine manufacturer. For purposes of this paragraph (d)(2)(iii), engine family refers to engines that have common characteristics as described in § 89.116.

* * * * *

(g) *Allowance for the production of engines.* Engine manufacturers may take any of the otherwise prohibited actions identified in § 89.1003(a)(1) with regard to uncertified engines, Tier 1 engines, or Tier 2 engines, as appropriate, if the engine manufacturer has received written assurance from the equipment manufacturer that the engine is required to meet the demand for engines created under paragraph (d), (f), or (h) of this section.

* * * * *

(i) *Additional exemptions for technical or engineering hardship.* You may request additional engine allowances under paragraph (d)(1) of this section for 56–560 kW power categories or, if you are a small equipment manufacturer, under paragraph (d)(2) of this section for engines at or above 37 and below 75 kW. However, you may use these extra allowances only for those equipment models for which you, or an affiliated company, do not also produce the engine. After considering the circumstances, we may permit you to introduce into U.S. commerce equipment with such engines that do not comply with Tier 3 emission standards, as follows:

(1) We may approve additional exemptions if extreme and unusual circumstances that are clearly outside your control and that could not have been avoided with reasonable discretion have resulted in technical or engineering problems that prevent you from meeting the requirements of this part. You must show that you exercised prudent planning and have taken all reasonable steps to minimize the scope of your request for additional allowances.

(2) To apply for exemptions under this paragraph (i), send the Designated Compliance Officer and the Designated Enforcement Officer a written request as soon as possible before you are in violation. In your request, include the following information:

(i) Describe your process for designing equipment.

(ii) Describe how you normally work cooperatively or concurrently with your engine supplier to design products.

(iii) Describe the engineering or technical problems causing you to request the exemption and explain why you have not been able to solve them. Describe the extreme and unusual circumstances that led to these problems and explain how they were unavoidable.

(iv) Describe any information or products you received from your engine supplier related to equipment design—such as written specifications, performance data, or prototype engines—and when you received it.

(v) Compare the design processes of the equipment model for which you need additional exemptions and that for other models for which you do not need additional exemptions. Explain the technical differences that justify your request.

(vi) Describe your efforts to find and use other compliant engines, or otherwise explain why none is available.

(vii) Describe the steps you have taken to minimize the scope of your request.

(viii) Include other relevant information. You must give us other relevant information if we ask for it.

(ix) Estimate the increased percent of production you need for each equipment model covered by your request, as described in paragraph (i)(3) of this section. Estimate the increased number of allowances you need for each equipment model covered by your request, as described in paragraph (i)(4) of this section.

(3) We may approve your request to increase the allowances under paragraph (d)(1) of this section, subject to the following limitations:

(i) The additional allowances will not exceed 50 percent for each power category.

(ii) You must use up the allowances under paragraph (d)(1) of this section before using any additional allowance under this paragraph (i).

(iii) Any allowances we approve under this paragraph (i)(3) expire 24 months after the provisions of this section start for a given power category. You may use these allowances only for the specific equipment models covered by your request.

(4) We may approve your request to increase the allowances for the 37–75kW power category under paragraph (d)(2) of this section, subject to the following limitations:

(i) You are eligible for additional allowances under this paragraph (i)(4) only if you are a small equipment manufacturer and you do not use the provisions of paragraph (i)(3) of this section to obtain additional allowances for the 37–75kW power category.

(ii) You must use up all the available allowances for the 37–75kW power category under paragraph (d)(2) of this section in a given year before using any additional allowances under this paragraph (i)(4).

(iii) Base your request only on equipment you produce with engines at or above 37kW and below 75kW. You may use any additional allowances only for equipment you produce with engines at or above 37kW and below 75kW.

(iv) Any allowances we approve under this paragraph (i)(4) expire 24 months after the provisions of this section start for this power category. These additional allowances are not subject to the annual limits specified in paragraph (d)(2) of this section. You may use these allowances only for the specific equipment models covered by your request.

(v) The total allowances under paragraph (d)(2) of this section for the 37–75kW power category will not exceed 700 units. The total allowances under this paragraph (i)(4) follow the requirements under paragraph (d)(2) of this section for the 37–75kW power category and will not exceed 200 units. Therefore, the total maximum allowances for the 37–75kW power category will not exceed 900 units.

(5) For purposes of this paragraph (i), *small equipment manufacturer* means an equipment manufacturer that had annual U.S.-directed production volume of equipment using nonroad diesel engines between 37 and 75kW of no more than 3,000 units in 2002 and all earlier calendar years, and has 750 or fewer employees (500 or fewer employees for nonroad equipment manufacturers that produce no construction equipment or industrial trucks). For manufacturers owned by a parent company, the production limit applies to the production of the parent company and all its subsidiaries and the employee limit applies to the total number of employees of the parent company and all its subsidiaries.

(6) The following provisions for adjusted flexibilities for Tier 4 engines apply to equipment manufacturers that are granted additional exemptions for technical or engineering hardship:

(i) If you use the additional allowance under this paragraph (i) you shall forfeit percent of production flexibility plus technical or engineering hardship exemptions available for Tier 4 engines in the amounts shown in Table 1 of this section.

(ii) Table 1 of this section shows the percent of production flexibility and technical or engineering hardship exemptions that you must forfeit for Tier 4 engines. The amount of Tier 4 flexibility forfeited by each equipment manufacturer depends on the percent of production flexibility used for Tier 2 engines and the technical or engineering hardship exemptions granted for Tier 3 engines in the proportions shown in Table 1. For example, if you used 45 percent of your production flexibility for Tier 2 engines, you must forfeit 2 percent of your production flexibility for Tier 4 engines for every 1 percent of technical or engineering hardship flexibility granted for Tier 3 engines. In addition you must also forfeit 1 percent of any technical or engineering hardship exemptions available for Tier 4 engines for every 1 percent technical or engineering hardship exemptions available for Tier 3 engines. If you use the Tier 3 technical or engineering hardship allowances for 5 percent of your equipment in each of two different years, you have used a total allowance of 10 percent. Therefore you must forfeit a total of 20 percent of production flexibility for Tier 4 engines plus 10 percent of any technical or engineering hardship exemptions available for Tier 4 engines.

TABLE 1 OF § 89.102.—ADJUSTMENTS TO TIER 4 FLEXIBILITIES

Percent of use tier 2 production flexibility (percent)	Percent of forfeit tier 4 production flexibility (percent)	Percent of forfeit tier 4 Tech./Eng. exemption (percent)
0–20	0	1
20–40	1	1
40–60	2	1
60–80	3	1

(iii) Because the Tier 3 and Tier 4 rules have different power category ranges, the availability of technical relief will be further adjusted based on the sales volume by power category. Table 2 of this section shows the applicable power categories for Tier 3 and Tier 4. The Tier 3 power categories of 37kW to 75kW and 75kW to 130kW correspond to the Tier 4 power category of 56kW to 130kW. For the Tier 3 equipment in the 37 to 75kW category, you must only use the sales volume for equipment that uses engines with a rated power greater than 56kW. For example, if you have a Tier 3 piece of equipment that uses a 40kW engine, the sales of the equipment are counted in the Tier 4 power category of 19kW to 56kW. If you have a Tier 3 piece of equipment that uses a 60kW engine, the sales of the equipment are counted in the Tier 4 power category of 56kW to 130kW. The Tier 3 power categories of 130kW to 225kW, 225kW to 450kW and 450kW to 560kW correspond to the Tier 4 power category of 130kW to 560kW. You will need to sum the sales of the Tier 3 power categories that correspond to the Tier 4 power category during each calendar year in which Tier 3 technical relief is used. The sum of all the Tier 3 units that are produced and exempted by the technical relief divided by the sum of all the Tier 3 units sold in the corresponding Tier 4 power category will determine the percentage of Tier 4 flexibility affected. For example, if you produce 50 units using Tier 3 technical relief in the range of 130kW to 225kW, and you produce 50 units using Tier 3 technical relief in the range of 225 to 450kW, and no units are produced in the 450kW to 560kW range, and your overall sales volume for the power ranges of 130kW to 560kW in Tier 3 is 400 units, the amount of Tier 3 technical relief used is 100/400 or 25 percent. Because you forfeit 1 percent of your Tier 4 technical relief for every 1 percent of Tier 3 technical relief used, then you will lose 25 percent of your Tier 4 technical relief in the 130kW to 560kW power range category. If you used 45 percent of your production flexibility for Tier 2 engines, you must forfeit 2 percent of production flexibility for Tier 4 engines for every 1 percent of Tier 3 technical relief. Therefore, you will forfeit 50 percent of your Tier 4 production allowance in the 130kW to 560kW power range category.

TABLE 2 OF § 89.102.—CORRESPONDING TIER 3 AND TIER 4 POWER CATEGORIES

Tier 3 Power Catgories	Tier 4 Power Categories
37kW to 75kW*	19kW to 56kW.
37kW to 75kW**, 75kW to 130kW.	56kW to 130kW.
130kW to 225kW, 225kW to 450kW, 450kW to 560kW.	130kW to 560kW.

*Applies only to use of engines rated between 37kW and 56kW by small volume equipment manufacturers.

**Includes only equipment that uses engines with a rated power greater than 56kw.

(iv) Manufacturers using allowances under this paragraph (i) must comply with the notification and reporting requirements specified in paragraph (j) of this section.

(j) *Notification and reporting.* You must notify us of your intent to use the provisions of this section and send us an annual report to verify that you are not exceeding the allowances, as follows:

(1) Before the first year you intend to use the provisions of this section, send the Designated Compliance Officer and the Designated Enforcement Officer a written notice of your intent, including:

(i) Your company's name and address, and your parent company's name and address, if applicable.

(ii) Whom to contact for more information.

(iii) The calendar years in which you expect to use the exemption provisions of this section.

(iv) The name and address of the company that produces the engines you will be using for the equipment exempted under this section.

(v) Your best estimate of the number of units in each power category you will produce under this section and whether you intend to comply under paragraph (d)(1) or (d)(2) of this section.

(vi) The number of units in each power category you have sold in previous calendar years under paragraph (d) of this section.

(2) For each year that you use the provisions of this section, send the Designated Compliance Officer and the Designated Enforcement Officer a written report by March 31 of the following year. Include in your report the total number of engines you sold in the preceding year for each power category, based on actual U.S.-directed production information. Also identify the percentages of U.S.-directed production that correspond to the number of units in each power category and the cumulative numbers and percentages of units for all the units you have sold under this section for each power category. You may omit the percentage figures if you include in the report a statement that you will not be using the percent-of-production allowances in paragraph (d) of this section.

(k) *Recordkeeping.* Keep the following records of all equipment with exempted engines you produce under this section for at least five full years after the final year in which allowances are available for each power category:

(1) The model number, serial number, and the date of manufacture for each engine and piece of equipment.

(2) The maximum power of each engine.

(3) The total number or percentage of equipment with exempted engines, as described in paragraph (d) of this section and all documentation supporting your calculation.

(4) The notifications and reports we require under paragraph (j) of this section.

(l) *Equipment Labeling.* Any engine produced under this provision must meet the labeling requirements of 40 CFR 89.110, but add the following statement instead of the compliance statement in 40 CFR 89.110(b)(10): THIS ENGINE MEETS U.S. EPA EMISSION STANDARDS UNDER 40 CFR 89.102. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN FOR THE EQUIPMENT FLEXIBILITY PROVISIONS OF 40 CFR 89.102 MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

(m) *Enforcement.* Producing more exempted engines or equipment than we allow under this section or installing engines that do not meet the applicable Tier 1 emission standards described in § 89.112 violates the prohibitions in § 89.1003(a)(1). You must give us the records we require under this section if we ask for them (see § 89.1003(a)(2)).

■ 8. Section 89.108 is revised by adding paragraph (d) to read as follows:

§ 89.108 Adjustable parameters, requirements.

* * * * *

(d) For engines that use noncommercial fuels significantly different than the specified test fuel of the same type, the manufacturer may ask to use the parameter-adjustment provisions of 40 CFR 1039.615 instead of those in this section. Engines certified under this paragraph (d) must be in a separate engine family. See 40 CFR 1039.801 for the definition of "noncommercial fuels".

■ 9. Section 89.115 is amended by adding paragraph (g) to read as follows:

§ 89.115 Application for certificate.

* * * * *

(g) The manufacturer must name an agent for service located in the United States. Service on this agent constitutes service on the manufacturer or any of its officers or employees for any action by EPA or otherwise by the United States related to the requirements of this part.

■ 10. Section 89.205 is amended by revising to paragraph (a) to read as follows:

§ 89.205 Banking.

(a) *Requirements for Tier 1 engines rated at or above 37 kW.* (1) A manufacturer of a nonroad engine family with a NO_X FEL below the applicable standard for a given model year may bank credits in that model year for use in averaging and trading in any subsequent model year.

(2) A manufacturer of a nonroad engine family may bank NO_X credits up to one calendar year prior to the effective date of mandatory certification. Such engines must meet the requirements of subparts A, B, D, E, F, G, H, I, J, and K of this part.

(3)(i) A manufacturer of a nonroad engine family may bank PM credits from Tier 1 engines under the provisions specified in § 89.207(b) for use in averaging and trading in the Tier 2 or later timeframe. These credits are considered to be Tier 2 credits.

(ii) Such engine families are subject to all provisions specified in subparts A, B, D, E, F, G, H, I, J, and K of this part, except that the applicable PM FEL replaces the PM emission standard for the family participating in the banking and trading program.

* * * * *

Subpart G—[Amended]

■ 11. Section 89.601 is amended by adding paragraph (d) to read as follows:

§ 89.601 Applicability.

* * * * *

(d) Importers must complete the appropriate EPA declaration form before importing an engine. These forms are available on the Internet at *http://www.epa.gov/OTAQ/imports/* or by phone at 734–214–4100. Importers must keep the forms for five years and make them available upon request.

■ 12. Section 89.611 is amended by adding paragraphs (f)(1)(v) and (f)(1)(vi) to read as follows:

§ 89.611 Exemptions and exclusions.

* * * * *

(f) * * *

(1) * * *

(v) All nonroad engines greater than or equal to 19 kW but less than 37 kW originally manufactured prior to January 1, 1999.

(vi) All nonroad engines less than 19 kW originally manufactured prior to January 1, 2000.

* * * * *

PART 1039—CONTROL OF EMISSIONS FROM NEW AND IN-USE NONROAD COMPRESSION-IGNITION ENGINES

■ 13. The authority citation for part 1039 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

■ 14. A new § 1039.2 is added to read as follows:

§ 1039.2 Who is responsible for compliance?

The regulations in this part 1039 contain provisions that affect both engine manufacturers and others. However, the requirements of this part are generally addressed to the engine manufacturer. The term "you" generally means the engine manufacturer, as defined in § 1039.801, especially for issues related to certification.

■ 15. Section 1039.10 is amended by revising the introductory text to read as follows:

§ 1039.10 How is this part organized?

This part 1039 is divided into the following subparts:

* * * * *

Subpart B—[Amended]

■ 16. Section 1039.102 is amended by revising paragraphs (g)(2) to read as follows:

§ 1039.102 What exhaust emission standards and phase-in allowances apply for my engines in model year 2014 and earlier?

* * * * *

(g) * * *

(2) *Interim FEL caps.* As described in § 1039.101(d), you may participate in the ABT program in subpart H of this part by certifying engines to FELs for PM, NO_X, or NO_X+NMHC instead of the standards in Tables 1 through 7 of this section for the model years shown. The FEL caps listed in the following table apply instead of the FEL caps in § 1039.101(d)(1), except as allowed by § 1039.104(g):

TABLE 8 OF § 1039.102.—INTERIM TIER 4 FEL CAPS, G/KW-HR

Maximum engine power	Phase-in option	Model years[1]	PM	NO_X	NO_X+NMHC
kW < 19		2008–2014	0.80		[2] 9.5
19 ≤ kW < 37		2008–2012	0.60		9.5
37 ≤ kW < 56		[3] 2008–2012	0.40		7.5
56 ≤ kW < 130	phase-in	2012–2013	0.04	0.80	
56 ≤ kW < 130	phase-out	2012–2013	0.04		[4] 6.6
130 ≤ kW ≤ 560	phase-in	2011–2013	0.04	0.80	
130 ≤ kW ≤ 560	phase-out	2011–2013	0.04		[5] 6.4
kW > 560		2011–2014	0.20	6.2	

[1] For model years before 2015 where this table does not specify FEL caps, apply the FEL caps shown in § 1039.101.
[2] For engines below 8 kW, the FEL cap is 10.5 g/kW-hr for NO_X+NMHC emissions.
[3] For manufacturers certifying engines to the standards of this part 1039 in 2012 under Option #2 of Table 3 of § 1039.102, the FEL caps for 37–56 kW engines in the 19–56 kW category of Table 2 of § 1039.101 apply for model year 2012 and later; see 40 CFR part 89 for provisions that apply to earlier model years.
[4] For engines below 75 kW, the FEL cap is 7.5 g/kW-hr for NO_X+NMHC emissions.
[5] For engines below 225 kW, the FEL cap is 6.6 g/kW-hr for NO_X+NMHC emissions.

* * * * *

■ 17. Section 1039.104 is amended by revising Table 1 in paragraph (g)(4) to read as follows:

§ 1039.104 Are there interim provisions that apply only for a limited time?

* * * * *

(g) * * *

(4) * * *

TABLE 1 OF § 1039.104.—ALTERNATE FEL CAPS

Maximum engine power	PM FEL cap, g/kW-hr	Model years for the alternate PM FEL cap	NO_X FEL cap, g/kW-hr	Model years for the alternate NO_X FEL cap
19 ≤ kW < 56	0.30	[1] 2012–2015		
56 ≤ kW < 130[2]	0.30	2012–2015	3.8	[3] 2012–2015
130 ≤ kW ≤ 560	0.20	2011–2014	3.8	[4] 2011–2014
kW > 560[5]	0.10	2015–2018	3.5	2015–2018

[1] For manufacturers certifying engines under Option #1 of Table 3 of § 1039.102, these alternate FEL caps apply to all 19–56 kW engines for model years from 2013 through 2016 instead of in the years indicated in this table. For manufacturers certifying engines under Option #2 of Table 3 of § 1039.102, these alternate FEL caps do not apply to 19–37 kW engines except in model years 2013 to 2015.
[2] For engines below 75 kW, the FEL caps are 0.40 g/kW-hr for PM emissions and 4.4 g/kW-hr for NO_X emissions.
[3] For manufacturers certifying engines in this power category using a percentage phase-in/phase-out approach instead of the alternate NO_X standards of § 1039.102(e)(1), the alternate NO_X FEL cap in the table applies only in the 2014–2015 model years if certifying under § 1039.102(d)(1), and only in the 2015 model year if certifying under (1039.102(d)(2).
[4] For manufacturers certifying engines in this power category using the percentage phase-in/phase-out approach instead of the alternate NO_X standard of § 1039.102(e)(2), the alternate NO_X FEL cap in the table applies only for the 2014 model year.
[5] For engines above 560 kW, the provision for alternate NO_X FEL caps is limited to generator-set engines. For example, if you produce 1,000 generator-set engines above 560 kW in 2015, up to 200 of them may be certified to the alternate NO_X FEL caps.

■ 18. Section 1039.115 is amended by revising the section heading, the introductory text, and paragraph (a) introductory text to read as follows:

§ 1039.115 What other requirements apply?

Engines that are required to meet the emission standards of this part must meet the following requirements, except as noted elsewhere in this part:

(a) *Crankcase emissions.* Crankcase emissions may not be discharged directly into the ambient atmosphere from any engine throughout its useful life, except as follows:

* * * * *

■ 19. Section 1039.125 is amended by revising paragraph (f) introductory text to read as follows:

§ 1039.125 What maintenance instructions must I give to buyers?

* * * * *

(f) *Source of parts and repairs.* State clearly on the first page of your written maintenance instructions that a repair shop or person of the owner's choosing may maintain, replace, or repair emission-control devices and systems. Your instructions may not require components or service identified by brand, trade, or corporate name. Also, do not directly or indirectly condition your warranty on a requirement that the engine be serviced by your franchised dealers or any other service establishments with which you have a commercial relationship. You may disregard the requirements in this paragraph (f) if you do one of two things:

* * * * *

■ 20. Section 1039.135 is amended by revising paragraph (g) to read as follows:

§ 1039.135 How must I label and identify the engines I produce?

* * * * *

(g) If you obscure the engine label while installing the engine in the equipment such that the label cannot be read during normal maintenance, you must place a duplicate label on the equipment. If others install your engine in their equipment in a way that obscures the engine label, we require them to add a duplicate label on the equipment (see 40 CFR 1068.105); in that case, give them the number of duplicate labels they request and keep the following records for at least five years:

(1) Written documentation of the request from the equipment manufacturer.

(2) The number of duplicate labels you send for each engine family and the date you sent them.

Subpart C—[Amended]

■ 21. Section 1039.205 is amended by revising paragraphs (o) and (x) and adding paragraph (aa) to read as follows

§ 1039.205 What must I include in my application?

* * * * *

(o) Present emission data for hydrocarbons (such as NMHC or THCE, as applicable), NO_X, PM, and CO on an emission-data engine to show your engines meet the applicable duty-cycle emission standards we specify in § 1039.101. Show emission figures before and after applying adjustment factors for regeneration and deterioration factors for each engine. Include emission results for each mode if you do discrete-mode testing under § 1039.505. Present emission data to show that you meet any applicable smoke standards we specify in § 1039.105. If we specify more than one grade of any fuel type (for example, high-sulfur and low-sulfur diesel fuel), you need to submit test data only for one grade, unless the regulations of this part specify otherwise for your engine. Note that § 1039.235 allows you to submit an application in certain cases without new emission data.

* * * * *

(x) Include good-faith estimates of U.S.-directed production volumes. Include a justification for the estimated production volumes if they are substantially different than actual production volumes in earlier years for similar models.

* * * * *

(aa) Name an agent for service located in the United States. Service on this agent constitutes service on you or any of your officers or employees for any action by EPA or otherwise by the United States related to the requirements of this part.

■ 22. Section 1039.210 is revised to read as follows:

§ 1039.210 May I get preliminary approval before I complete my application?

If you send us information before you finish the application, we will review it and make any appropriate determinations, especially for questions related to engine family definitions, auxiliary emission-control devices, deterioration factors, testing for service accumulation, maintenance, and NTE deficiencies and carve-outs. Decisions made under this section are considered to be preliminary approval, subject to final review and approval. We will generally not reverse a decision where we have given you preliminary approval, unless we find new information supporting a different decision. If you request preliminary approval related to the upcoming model year or the model year after that, we will make best-efforts to make the appropriate determinations as soon as practicable. We will generally not provide preliminary approval related to a future model year more than two years ahead of time.

■ 23. Section 1039.225 is amended by revising paragraphs (a), (b)(3), (d), and (e) to read as follows:

§ 1039.225 How do I amend my application for certification to include new or modified engines or change an FEL?

* * * * *

(a) You must amend your application before you take any of the following actions:

(1) Add an engine configuration to an engine family. In this case, the engine configuration added must be consistent with other engine configurations in the engine family with respect to the criteria listed in § 1039.230.

(2) Change an engine configuration already included in an engine family in a way that may affect emissions, or change any of the components you described in your application for certification. This includes production and design changes that may affect emissions any time during the engine's lifetime.

(3) Modify an FEL for an engine family as described in paragraph (f) of this section.

(b) * * *

(3) If the original emission-data engine for the engine family is not appropriate to show compliance for the new or modified engine configuration, include new test data showing that the new or modified engine configuration meets the requirements of this part.

* * * * *

(d) For engine families already covered by a certificate of conformity, we will determine whether the existing certificate of conformity covers your newly added or modified engine. You may ask for a hearing if we deny your request (see § 1039.820).

(e) For engine families already covered by a certificate of conformity, you may start producing the new or modified engine configuration anytime after you send us your amended application and before we make a decision under paragraph (d) of this section. However, if we determine that the affected engines do not meet applicable requirements, we will notify you to cease production of the engines and may require you to recall the engines at no expense to the owner. Choosing to produce engines under this paragraph (e) is deemed to be consent to recall all engines that we determine do not meet applicable emission standards or other requirements and to remedy the nonconformity at no expense to the owner. If you do not provide information required under paragraph (c) of this section within 30 days, you must stop producing the new or modified engines.

* * * * *

■ 24. Section 1039.230 is amended by revising paragraph (a) to read as follows:

§ 1039.230 How do I select engine families?

(a) For purposes of certification, divide your product line into families of engines that are expected to have similar emission characteristics throughout the useful life as described in this section. Your engine family is limited to a single model year.

* * * * *

■ 25. Section 1039.235 is amended by revising paragraph (d)(1) to read as follows:

§ 1039.235 What emission testing must I perform for my application for a certificate of conformity?

* * * * *

(d) * * *

(1) The engine family from the previous model year differs from the current engine family only with respect to model year or other characteristics unrelated to emissions.

* * * * *

■ 26. Section 1039.245 is amended by revising the introductory text to read as follows:

§ 1039.245 How do I determine deterioration factors from exhaust durability testing?

Establish deterioration factors to determine whether your engines will meet emission standards for each pollutant throughout the useful life, as described in §§ 1039.101 and 1039.240. This section describes how to determine deterioration factors, either with an engineering analysis, with pre-existing test data, or with new emission measurements.

* * * * *

■ 27. Section 1039.255 is amended by revising paragraph (d) to read as follows:

§ 1039.255 What decisions may EPA make regarding my certificate of conformity?

* * * * *

(d) We may void your certificate if you do not keep the records we require or do not give us information as required under this part or the Act.

* * * * *

Subpart F—[Amended]

■ 28. Section 1039.501 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1039.501 How do I run a valid emission test?

(a) Use the equipment and procedures for compression-ignition engines in 40 CFR part 1065 to determine whether engines meet the duty-cycle emission standards in subpart B of this part. Measure the emissions of all the regulated pollutants as specified in 40 CFR part 1065. Use the applicable duty cycles specified in §§ 1039.505 and 1039.510.

(b) Section 1039.515 describes the supplemental procedures for evaluating whether engines meet the not-to-exceed emission standards in subpart B of this part.

* * * * *

■ 29. Section 1039.505 is amended by revising paragraphs (a)(1) introductory text and (a)(1)(ii) to read as follows:

§ 1039.505 How do I test engines using steady-state duty cycles, including ramped-modal testing?

* * * * *

(a) * * *

(1) For discrete-mode testing, sample emissions separately for each mode, then calculate an average emission level for the whole cycle using the weighting factors specified for each mode. Calculate cycle statistics for each mode and compare with the specified values in 40 CFR part 1065 to confirm that the test is valid. Operate the engine and sampling system as follows:

* * * * *

(ii) Engines without NO_X aftertreatment. For other engines, operate the engine for at least 5 minutes, then sample emissions for at least 1 minute in each mode.

* * * * *

Subpart G—[Amended]

■ 30. Section 1039.605 is amended by revising paragraphs (a), (b), (c), (d) introductory text, (d)(8)(ii), and (d)(8)(iii) to read as follows:

§ 1039.605 What provisions apply to engines certified under the motor-vehicle program?

(a) *General provisions.* If you are an engine manufacturer, this section allows you to introduce new nonroad engines into commerce if they are already certified to the requirements that apply to compression-ignition engines under 40 CFR parts 85 and 86 for the appropriate model year. If you comply with all the provisions of this section, we consider the certificate issued under 40 CFR part 86 for each engine to also be a valid certificate of conformity under this part 1039 for its model year, without a separate application for certification under the requirements of this part 1039. See § 1039.610 for similar provisions that apply to engines certified to chassis-based standards for motor vehicles.

(b) *Equipment-manufacturer provisions.* If you are not an engine manufacturer, you may produce nonroad equipment using motor-vehicle engines under this section as long as you meet all the requirements and conditions specified in paragraph (d) of this section. You must also add the fuel-inlet label we specify in § 1039.135(e). If you modify the motor-vehicle engine in any of the ways described in paragraph (d)(2) of this section, we will consider you a manufacturer of a new nonroad engine. Such engine modifications prevent you from using the provisions of this section.

(c) *Liability.* Engines for which you meet the requirements of this section are exempt from all the requirements and prohibitions of this part, except for those specified in this section. Engines exempted under this section must meet all the applicable requirements from 40 CFR parts 85 and 86. This applies to engine manufacturers, equipment manufacturers who use these engines, and all other persons as if these engines were used in a motor vehicle. The prohibited acts of 40 CFR 1068.101(a)(1) apply to these new engines and equipment; however, we consider the certificate issued under 40 CFR part 86 for each engine to also be a valid certificate of conformity under this part 1039 for its model year. If we make a determination that these engines do not conform to the regulations during their useful life, we may require you to recall them under 40 CFR part 86 or 40 CFR 1068.505.

(d) *Specific requirements.* If you are an engine manufacturer or equipment manufacturer and meet all the following criteria and requirements regarding your new nonroad engine, the engine is eligible for an exemption under this section:

* * * * *

(8) * * *

(ii) List the engine or equipment models you expect to produce under this exemption in the coming year and describe your basis for meeting the sales restrictions of paragraph (d)(3) of this section.

(iii) State: ''We produce each listed [engine or equipment] model for nonroad application without making any changes that could increase its certified emission levels, as described in 40 CFR 1039.605.''.

* * * * *

■ 31. Section 1039.610 is amended by revising paragraphs (a), (b), (c), (d)(7)(ii), and (d)(7)(iii) to read as follows:

§ 1039.610 What provisions apply to vehicles certified under the motor-vehicle program?

(a) *General provisions.* If you are a motor-vehicle manufacturer, this section allows you to introduce new nonroad engines or equipment into commerce if the vehicle is already certified to the requirements that apply under 40 CFR parts 85 and 86 for the appropriate model year. If you comply with all of the provisions of this section, we consider the certificate issued under 40 CFR part 86 for each motor vehicle to also be a valid certificate of conformity for the engine under this part 1039 for its model year, without a separate application for certification under the requirements of this part 1039. See § 1039.605 for similar provisions that apply to motor-vehicle engines produced for nonroad equipment.

(b) *Equipment-manufacturer provisions.* If you are not a motor-vehicle manufacturer, you may produce nonroad equipment from motor vehicles under this section as long as you meet all the requirements and conditions specified in paragraph (d) of this section. You must also add the fuel-inlet label we specify in § 1039.135(e). If you modify the motor vehicle or its engine in any of the ways described in paragraph (d)(2) of this section, we will consider you a manufacturer of a new nonroad engine. Such modifications prevent you from using the provisions of this section.

(c) *Liability.* Engines, vehicles, and equipment for which you meet the requirements of this section are exempt from all the requirements and prohibitions of this part, except for those specified in this section. Engines exempted under this section must meet all the applicable requirements from 40 CFR parts 85 and 86. This applies to engine manufacturers, equipment manufacturers, and all other persons as if the nonroad equipment were motor vehicles. The prohibited acts of 40 CFR 1068.101(a)(1) apply to these new pieces of equipment; however, we consider the certificate issued under 40 CFR part 86 for each motor vehicle to also be a valid certificate of conformity for the engine under this part 1039 for its model year. If we make a determination that these engines, vehicles, or equipment do not conform to the regulations during their useful life, we may require you to recall them under 40 CFR part 86 or 40 CFR 1068.505.

(d) * * *

(7) * * *

(ii) List the equipment models you expect to produce under this exemption in the coming year and describe your basis for meeting the sales restrictions of paragraph (d)(3) of this section.

(iii) State: ''We produced each listed engine or equipment model for nonroad application without making any changes that could increase its certified emission levels, as described in 40 CFR 1039.610.''

* * * * *

■ 32. Section 1039.625 is amended by revising paragraph (e)(3) as follows:

§ 1039.625 What requirements apply under the program for equipment-manufacturer flexibility?

* * * * *

(e) * * *

(3) In all other cases, engines at or above 56 kW and at or below 560 kW must meet the appropriate Tier 3 standards described in § 89.112. Engines below 56 kW and engines above 560 kW must meet the appropriate Tier 2 standards described in § 89.112.

* * * * *

Subpart H—[Amended]

■ 33. Section 1039.705 is amended by removing and reserving paragraph (a) and revising paragraph (b) before the equation to read as follows:

§ 1039.705 How do I generate and calculate emission credits?

* * * * *

(a) [Reserved]

(b) For each participating family, calculate positive or negative emission credits relative to the otherwise applicable emission standard. Calculate positive emission credits for a family that has an FEL below the standard. Calculate negative emission credits for a family that has an FEL above the standard. Sum your positive and negative credits for the model year before rounding. Round calculated emission credits to the nearest kilogram (kg), using consistent units throughout the following equation:

* * * * *

■ 34. Section 1039.730 is amended by revising paragraph (c)(1) to read as follows:

§ 1039.730 What ABT reports must I send to EPA?

* * * * *

(c) * * *

(1) Show that your net balance of emission credits from all your participating engine families in each averaging set in the applicable model year is not negative.

* * * * *

■ 35. Section 1039.735 is amended by revising paragraph (b) to read as follows:

§ 1039.735 What records must I keep?

* * * * *

(b) Keep the records required by this section for eight years after the due date for the end-of-year report. You may not use emission credits on any engines if you do not keep all the records required under this section. You must therefore keep these records to continue to bank valid credits. Store these records in any format and on any media, as long as you can promptly send us organized, written records in English if we ask for them. You must keep these records readily available. We may review them at any time.

* * * * *

Subpart I—[Amended]

■ 36. Section 1039.801 is amended by revising the definitions for ''Certification'', ''Constant-speed operation'', ''Designated Compliance Officer'', ''Emission-control system'', ''Intermediate test speed'', paragraph (1) of the definition of ''New nonroad engine'', ''Nonmethane hydrocarbon'', ''Oxides of nitrogen'', ''Round'', and ''Steady-state'' and adding a definition for ''Owners manual'' in alphabetical order to read as follows:

§ 1039.801 What definitions apply to this part?

* * * * *

Certification means relating to the process of obtaining a certificate of conformity for an engine family that complies with the emission standards and requirements in this part.

* * * * *

Constant-speed operation has the meaning given in 40 CFR 1065.1001.

* * * * *

Designated Compliance Officer means the Manager, Heavy-Duty and Nonroad Engine Group (6403–J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

* * * * *

Emission-control system means any device, system, or element of design that controls or reduces the emissions of regulated pollutants from an engine.

* * * * *

Intermediate test speed has the meaning given in 40 CFR 1065.1001.

* * * * *

New nonroad engine means any of the following things:

(1) A freshly manufactured nonroad engine for which the ultimate purchaser has never received the equitable or legal title. This kind of engine might commonly be thought of as ''brand new.'' In the case of this paragraph (1), the engine is new from the time it is produced until the ultimate purchaser receives the title or the product is placed into service, whichever comes first.

* * * * *

Nonmethane hydrocarbons (NMHC) means the sum of all hydrocarbon species except methane. Refer to 40 CFR 1065.660 for NMHC determination.

* * * * *

Owners manual means a document or collection of documents prepared by the engine manufacturer for the owner or operator to describe appropriate engine maintenance, applicable warranties, and any other information related to operating or keeping the engine. The owners manual is typically provided to the ultimate purchaser at the time of sale.

Oxides of nitrogen has the meaning given in 40 CFR 1065.1001.

* * * * *

Round has the meaning given in 40 CFR 1065.1001.

* * * * *

Steady-state has the meaning given in 40 CFR 1065.1001.

* * * * *

■ 37. Section 1039.810 is amended by revising paragraph (a) and removing and reserving paragraph (b) to read as follows:

§ 1039.810 What materials does this part reference?

* * * * *

(a) *SAE material.* Table 1 of this section lists material from the Society of Automotive Engineering that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the sections of this part where we reference it. Anyone may purchase copies of these materials from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, PA 15096 or *http://www.sae.org.* Table 1 follows:

TABLE 1 OF § 1039.810.—SAE MATERIALS

Document number and name	Part 1039 reference
SAE J1930, Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms, revised May 1998	1039.135

(b) [Reserved]

■ 38. A new § 1039.825 is added to read as follows:

§ 1039.825 What reporting and recordkeeping requirements apply under this part?

Under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget approves the reporting and recordkeeping specified in the applicable regulations. The following items illustrate the kind of reporting and recordkeeping we require for engines and equipment regulated under this part:

(a) We specify the following requirements related to engine certification in this part 1039:

(1) In § 1039.20 we require engine manufacturers to label stationary engines that do not meet the standards in this part.

(2) In § 1039.135 we require engine manufacturers to keep certain records related to duplicate labels sent to equipment manufacturers.

(3) [Reserved]

(4) In subpart C of this part we identify a wide range of information required to certify engines.

(5) [Reserved]

(6) [Reserved]

(7) In subpart G of this part we identify several reporting and recordkeeping items for making demonstrations and getting approval related to various special compliance provisions. For example, equipment manufacturers must submit reports and keep records related to the flexibility provisions in § 1039.625.

(8) In § 1039.725, 1039.730, and 1039.735 we specify certain records related to averaging, banking, and trading.

(b) We specify the following requirements related to testing in 40 CFR part 1065:

(1) In 40 CFR 1065.2 we give an overview of principles for reporting information.

(2) In 40 CFR 1065.10 and 1065.12 we specify information needs for establishing various changes to published test procedures.

(3) In 40 CFR 1065.25 we establish basic guidelines for storing test information.

(4) In 40 CFR 1065.695 we identify data that may be appropriate for collecting during testing of in-use engines using portable analyzers.

(c) We specify the following requirements related to the general compliance provisions in 40 CFR part 1068:

(1) In 40 CFR 1068.5 we establish a process for evaluating good engineering judgment related to testing and certification.

(2) In 40 CFR 1068.25 we describe general provisions related to sending and keeping information.

(3) In 40 CFR 1068.27 we require manufacturers to make engines available for our testing or inspection if we make such a request.

(4) In 40 CFR 1068.105 we require equipment manufacturers to keep certain records related to duplicate labels from engine manufacturers.

(5) In 40 CFR 1068.120 we specify recordkeeping related to rebuilding engines.

(6) In 40 CFR part 1068, subpart C, we identify several reporting and recordkeeping items for making demonstrations and getting approval related to various exemptions.

(7) In 40 CFR part 1068, subpart D, we identify several reporting and recordkeeping items for making demonstrations and getting approval related to importing engines.

(8) In 40 CFR 1068.450 and 1068.455 we specify certain records related to testing production-line engines in a selective enforcement audit.

(9) In 40 CFR 1068.501 we specify certain records related to investigating and reporting emission-related defects.

(10) In 40 CFR 1068.525 and 1068.530 we specify certain records related to recalling nonconforming engines.

[FR Doc. E7–18161 Filed 9–17–07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2002–0043; FRL–8126–5]

Pesticide Tolerance Nomenclature Changes; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: This document makes minor revisions to the terminology of certain commodity terms listed under 40 CFR part 180, subpart C. EPA is taking this action to establish a uniform listing of commodity terms.

DATES: This Direct Final Rule is effective on November 2, 2007 without notice, unless EPA receives adverse comment by October 18, 2007. If EPA receives adverse comments, EPA will publish a **Federal Register** document to withdraw the direct final rule before the effective date.

If this Direct Final Rule becomes effective on November 2, 2007, any person may file objections and request for hearings on those objections. Objections and requests for hearings must be received on or before November 19, 2007. For direct final rules, the date of issuance is considered to be the effective date. Objections and hearings must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2002–0043. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available 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 Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Stephen Schaible, Registration Division

(7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9362; fax number: (703) 305–6920; e-mail address: schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturer (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturer (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2002–0043 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 19, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2002–0043, 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 Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background

EPA's Office of Pesticide Programs (OPP) has developed a commodity vocabulary data base entitled ''Food and Feed Commodity Vocabulary.'' The data base was developed to consolidate all the major OPP commodity vocabularies into one standardized vocabulary. As a result, all future pesticide tolerances issued under 40 CFR part 180 will use the ''preferred commodity term'' as listed in the aforementioned data base. This is the sixth in a series of documents revising the terminology of commodity terms currently in tolerances in 40 CFR part 180. Final rules, revising pesticide tolerance nomenclature, were published in the **Federal Register** on June 19, 2002 (67 FR 41802) (FRL–6835–2); June 21, 2002 (67 FR 42392) (FRL–7180–1); on July 1, 2003 (68 FR 39428) (FRL–7308–9); (68 FR 39435) (FRL–7316–9); and December 13, 2006 (71 FR 74802) (FRL–8064–3).

A.What action is the Agency Taking?

In this rule, EPA is amending tolerance commodity terms as follows:

1. The first letter of the commodity term is capitalized. All other letters, including the first letter of proper names, are changed to lower case.
2. Commodity terms are listed in the singular, although there are the following exceptions: ''leaves'', ''roots'', ''tops'', ''greens'', ''hulls'', ''vines'', ''fractions'', ''shoots'', and ''byproducts''.
3. Commodity terms are amended so that generic terms precede modifying terms. Example - ''Aspirated grain fractions'' is replaced with ''Grain, aspirated fractions''.
4. Parentheses are replaced with commas. Examples: ''Almond (hulls)'' is replaced with ''Almond, hulls''. ''Peppermint (tops)'' is replaced with ''Peppermint, tops''. ''Sugarcane (cane)'' is replaced with ''Sugarcane, cane''.
5. Abbreviated terms are replaced with the appropriate commodity terms. Examples - ''Cattle, mbyp''; ''Goat, mbyb''; ''Hog, mbyp''; ''Horse, mbyp'' and ''Sheep, mbyp'' are replaced with ''Cattle, meat byproducts''; ''Goat, meat byproducts''; ''Hog, meat byproducts''; ''Horse, meat byproducts'' and ''Sheep, meat byproducts''.
6. Crop group terms are revised to standardize with the Food and Feed Vocabulary. Examples of these types of changes are:

''Leafy vegetables except Brassica'' is replaced with ''Vegetable, leafy, except brassica, group 4''.

''Brassica, head and stem, subgroup'' is replaced with ''Brassica, head and stem, subgroup 5A''.

''Cucurbit, vegetables (Group 9)'' is replaced with ''Vegetable, cucurbit, group 9''.

''Dried, shelled pea and bean, except soybean (Crop Subgroup 6C)'' is replaced with ''Pea and bean, dried shelled, except soybean, subgroup 6C''.

''Forage, fodder and straw of Grain, cereal'' is replaced with ''Grain, cereal, forage, fodder and straw, group 16''.

''Nongrass animal feed'' is replaced with ''Animal feed, nongrass, group 18''.

B. Additional Changes

In addition to format changes to the commodity terms, this document also includes many revisions to the commodity terms. These revisions replace certain commodity terms that are no longer used by EPA with the appropriate matching term in the ''Food and Feed Vocabulary''. For example:

''Dry bulb onion'' and ''Onion, dry bulb'' are replaced with ''Onion, bulb''. ''Filbert'' is replaced with ''Hazelnut''. ''Peppermint'' and ''Spearmint'' are replaced with ''Peppermint, tops'' and ''Spearmint, tops''. ''Cotton seed'' and ''Cottonseed'' are replaced with ''Cotton, undelinted seed''. ''Beet, sugar'' is replaced with ''Beet, sugar, roots''. ''Sorghum, grain'' is replaced with ''Sorghum, grain, grain''. ''Sugarcane, fodder'' is replaced with ''Sugarcane, stover''.

''Corn, fresh (inc sweet corn), kernel plus cob with husks removed''; ''Corn, fresh (inc sweet, kernel plus cob with husks removed)''; ''Corn, fresh (inc. sweet, kernel plus cob with husks removed)''; ''Corn, fresh (including sweet K and corn with husks removed (CWHR)''; ''Corn, fresh (including sweet kernels plus cobs with husks removed)''; ''Corn, fresh (including sweet, kernel plus cob with husks removed)''; ''Corn, fresh, sweet, kernel plus cob with husks removed''; ''Corn, sweet grain, kernel plus cob with husks removed''; and ''Corn, sweet kernel plus cob with husks removed'' are replaced with ''Corn, sweet, kernel plus cob with husks removed''.

''Potato processing waste''; ''Potato, waste''; ''Potato, waste, dried, processed''; ''Potato waste, processed (wet and dry)''; and ''Processed, dried potato waste''; are replaced with ''Potato, processed potato waste''.

This document also deletes certain terms that are not needed to identify the tolerance commodities. Examples:

1. The terms ''nutmeat'' and ''nutmeats'' when used in association with the tree nut crops or peanut are not needed. For tree nut crops, nutmeat and almond hulls are the only edible portions of the crop consumed. Therefore, OPP's Food and Feed Commodity Vocabulary uses the commodity terms ''Almond'', ''Pecan'', ''Walnut'', etc. for the tree nuts and the commodity term ''Peanut'' is used in place of ''Peanut, nutmeat''.

2. The term ''Endive (escarole)'' is changed to ''Endive'' since the term ''Endive'' includes escarole.

3. The term ''Banana (includes plantains)'' is changed to ''Banana'' since the Food and Feed Vocabulary uses the term ''Banana'' includes plantains.

4. The terms ''Ginger, roots'' and ''Ginseng, roots'' are changed to ''Ginger'' and ''Ginseng'' since the roots are the only edible portion of the crop generally consumed.

C. Why is this Technical Amendment Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C.553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical amendment final without prior proposal and opportunity for comment, because today's action revises commodity terms listed under 40 CFR part 180, subpart C, in a manner that clearly will have no impact on the meaning of the tolerance regulations. For example, today's action revises commodity terms so that most are in singular (e.g., ''Orange'') instead of the plural (e.g., ''Oranges''). A complete description of the types of changes that are being made has been provided above. EPA has determined that there is no need for public comment on such ministerial changes and thus that there is good cause under 5 U.S.C. 553(b)(B) for dispensing with public comment. While EPA believes that it has correctly identified all instances where these above-listed revisions need to be made, the Agency would appreciate readers notifying EPA of discrepancies, omissions, or technical problems by submitting them to the address or e-mail under **FOR FURTHER INFORMATION CONTACT**. These will be corrected in a future rule.

IV. Statutory and Executive Order Reviews

This final rule makes technical amendments to the Code of Federal Regulations which have no substantive impact on the underlying regulations, and it does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that a technical amendment is not a ''significant regulatory action'' subject to review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). The Regulatory Flexibility Act (RFA) (5 U.S.C. 601et seq.) 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 will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental organizations. After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action proposes technical amendments to the Code of Federal Regulations which have no substantive impact on the underlying regulations. This technical amendment will not have any negative economic impact on any entities, including small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled Federalism (64 FR 43255, August 10, 1999).Executive Order 13132 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 final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this final rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This final rule will 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. Thus, Executive Order 13175 does not apply to this final rule.

V. 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Lists of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pest, Reporting and recordkeeping requirements.

Dated: September 4, 2007.

Debra Edwards,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I, part 180 is amended as follows:

PART 180—[AMENDED]

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

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

PART 180—[AMENDED]

■ 2. Part 180 is amended as follows:

In Section	In paragraph	Remove the term or phrase	Add in its place the term or phrase
180.103	(a) table	Soybean, dry	Soybean, seed
180.103	(a) table	Soybean, succulent	Soybean, vegetable, succulent
180.106	(a)(1) table	Fruit, citrus,	Fruit, citrus
180.106	(a)(1) table	Grass, hay (other than Bermudagrass, hay)	Grass, hay, except bermudagrass
180.106	(a)(1) table	Sorghum, grain	Sorghum, grain, grain
180.106	(b) table	Catfish fillets	Catfish
180.110	(a) table	Carrot,roots	Carrot, roots
180.111	(a)(1) table	Chayote fruit	Chayote, fruit
180.111	(a)(1) table	Chayote roots	Chayote, roots
180.111	(a)(1) table	Filbert	Hazelnut
180.111	(a)(1) table	Corn, fresh (including sweet, kernel plus cob with husks removed)	Corn, sweet, kernel plus cob with husks removed
180.111	(a)(1) table	Peppermint	Peppermint, tops
180.111	(a)(1) table	Sorghum, grain, postharvest	Sorghum, grain, grain, postharvest
180.111	(a)(1) table	Vegetables, leafy (except Brassica)	Vegetable, leafy, except brassica, group 4
180.111	(a)(3) text	refined safflower oil	safflower, refined oil
180.111	(a)(5)(i) text	dehydrated citrus pulp	citrus, dried pulp
180.111	(a)(5)(i) text	dried citrus pulp	citrus, dried pulp
180.121	(a) table	Beet, sugar	Beet, sugar, roots
180.121	(a) table	Beet, sugar, top	Beet, sugar, tops

In Section	In paragraph	Remove the term or phrase	Add in its place the term or phrase
180.123	(a)(1) table	Ginger, roots, postharvest	Ginger, postharvest
180.123	(c) table	Ginger, roots, postharvest	Ginger, postharvest
180.142	(a)(2) table	Corn, fresh, sweet, kernel plus cob with husks removed	Corn, sweet, kernel plus cob with husks removed
180.142	(a)(2) table	Grass hay	Grass, hay
180.142	(a)(2) table	Sorghum, grain	Sorghum, grain, grain
180.142	(a)(12)(i) text	sugarcane bagasse	sugarcane, bagasse
180.145	(a)(3) table	Fruit, dried , postharvest (other than raisin)	Fruit, dried, except grape, raisin, postharvest
180.153	(a)(1) table	Filbert	Hazelnut
180.153	(a)(1) table	Ginseng, roots	Ginseng
180.153	(a)(1) table	Onion, dry bulb	Onion, bulb
180.153	(c) table	Radish, Chinese (roots)	Radish, oriental, roots
180.153	(c) table	Radish, Chinese (tops)	Radish, oriental, tops
180.154	(a) table	Filbert	Hazelnut
180.157	(a) table	Melon (incl. Cantaloupe, Melon, honeydew, and muskmelon, determined on the edible portion with rind removed)	Melon (determined on the edible portion with rind removed)
180.163	(a)(1) table	Peppermint, hay	Peppermint, tops
180.169	(a)(1) table	Filbert (hazelnuts)	Hazelnut
180.169	(a)(1) table	Salsify (roots)	Salsify, roots
180.175	(a)(1) table	Onion, dry bulb	Onion, bulb
180.176	(a) table	Beet, sugar	Beet, sugar, roots
180.176	(a) table	Fresh corn (including sweet corn, kernels plus cob with husk removed)	Corn, sweet, kernel plus cob with husks removed
180.176	(a) table	Onion, dry bulb	Onion, bulb
180.176	(a) table	Peanut vine hay	Peanut, hay
180.176	(a) table	Popcorn grain	Corn, pop, grain
180.185	(a) table	Rutabagas	Rutabaga
180.205	(a) table	Beet, sugar	Beet, sugar, roots
180.205	(a) table	Sorghum, grain	Sorghum, grain, grain
180.206	(a) table	Sorghum, grain	Sorghum, grain, grain
180.207	(a) table	Peppermint oil	Peppermint, oil
180.207	(a) table	Spearmint oil	Spearmint, oil
180.209	(a) table	Canebserry	Caneberry subgroup 13A
180.211	(a) table	Sorghum, grain	Sorghum, grain, grain
180.213	(a)(1) table	Artichoke,globe	Artichoke, globe
180.213	(a)(1) table	Filbert	Hazelnut
180.220	(a)(1) table	Rye grass, perennial	Ryegrass, perennial
180.220	(a)(1) table	Sorghum, grain	Sorghum, grain, grain
180.220	(a)(1) table	Sugarcane, fodder	Sugarcane, stover

In Section	In paragraph	Remove the term or phrase	Add in its place the term or phrase
180.221	(a) table	Corn, sweet kernel plus cob with husks removed	Corn, sweet, kernel plus cob with husks removed
180.225	(a)(1) table	Banana (includes Plantains)	Banana
180.225	(a)(1) table	Filbert	Hazelnut
180.225	(a)(2) table	All RACs resulting from preharvest treatment of pest burrows	All raw agricultural commodities resulting from preharvest treatment of pest burrows
180.227	(a)(1) table	Crop Group 17 (grass, forage, fodder and hay)	Grass, forage, fodder and hay, group 17
180.227	(a)(1) table	Sorghum, grain	Sorghum, grain, grain
180.227	(a)(1) table	Sugarcane, fodder	Sugarcane, stover
180.231	(a) table	Filbert	Hazelnut
180.241	(a) table	Onion, dry bulb	Onion, bulb
180.242	(a)(1) table	Potato processing waste (PRE- & POST-H)	Potato, processed potato waste, postharvest
180.243	table	Sorghum, grain	Sorghum, grain, grain
180.245	(a)(1) table	Pome, fruit	Fruit, pome
180.249	table	Sorghum, grain (milo)	Sorghum, grain, grain
180.253	(a) table	Corn, fresh (inc sweet, kernel plus cob with husks removed)	Corn, sweet, kernel plus cob with husks removed
180.253	(a) table	Grass, Bermuda, hay (dried and dehydrated)	Bermudagrass, hay
180.254	(a) table	Barley straw (of which not more than 1.0 ppm is carbamates)	Barley, straw (of which no more than 1.0 ppm is carbamates)
180.254	(a) table	Beet, sugar	Beet, sugar, roots
180.254	(a) table	Corn, fresh (including sweet corn), kernel plus cob with husks removed (of which not more than 0.2 ppm is cabamates)	Corn, sweet, kernel plus cob with husks removed (of which no more than 0.2 ppm is carbamates)
180.254	(a) table	Raisins, waste (of which no more than 3.0 ppm is carbamates	Grape, raisin, waste (of which no more than 3.0 ppm is carbamates)
180.254	(a) table	Sorghum, fodder (of which no more than 0.5 ppm is carbamates)	Sorghum, grain, stover (of which no more than 0.5 ppm is carbamates)
180.254	(a) table	Sorghum, grain	Sorghum, grain, grain
180.258	(a) table	Sugarcane, fodder	Sugarcane, stover
180.258	(c) table	Cassava, root	Cassava, roots
180.259	(a) table	Sorghum, grain	Sorghum, grain, grain
180.261	(a) table	Cattle, mby	Cattle, meat byproducts
180.269	(a) table	Beet, sugar	Beet, sugar, roots
180.269	(a) table	Sorghum, grain	Sorghum, grain, grain
180.269	(a) table	Sugarcane, fodder	Sugarcane, stover
180.275	(a)(1) table	Onion, dry bulb	Onion, bulb
180.275	(c) table	Filbert	Hazelnut
180.298	(a) table	Fruit, citrus (except mandarins)	Fruit, citrus, except tangerine
180.298	(a) table	Sorghum, grain	Sorghum, grain, grain
180.304	(a) table	Berry, group 13	Berry group 13
180.317	(a) table	Cattle, meat byproducts, except kidney, liver	Cattle, meat byproducts, except kidney and liver

In Section	In paragraph	Remove the term or phrase	Add in its place the term or phrase
180.317	(a) table	Goat, meat byproducts, except kidney, liver	Goat, meat byproducts, except kidney and liver
180.317	(a) table	Hog, meat byproducts, except kidney, liver	Hog, meat byproducts, except kidney and liver
180.317	(a) table	Horse, meat byproducts, except kidney, liver	Horse, meat byproducts, except kidney and liver
180.317	(a) table	Nongrass animal feed	Animal feed, nongrass, group 18
180.317	(a) table	Poultry, meat byproductsidney, liver	Poultry, meat byproducts
180.317	(a) table	Radicchio, greens (tops)	Radicchio
180.317	(a) table	Sheep, meat byproducts, except kidney, liver	Sheep, meat byproducts, except kidney and liver
180.324	(a)(1) table	Sorghum, grain	Sorghum, grain, grain
180.330	(a) table	Beet, sugar	Beet, sugar, roots
180.330	(a) table	Filbert	Hazelnut
180.330	(a) table	Onion, dry bulb	Onion, bulb
180.342	(a)(1) table	Onion, dry bulb	Onion, bulb
180.342	(a)(2) table	Milk, whole	Milk
180.342	(c)(2) table	Feijoa (pineapple guava)	Feijoa
180.345	(a)(2) table	Sugar beet molasses	Beet, sugar, molasses
180.349	(a)(1) table	Grape, raisins	Grape, raisin
180.349	(c) table	Bok choy	Cabbage, chinese, bok choy
180.352	(a) table	Sorghum, grain	Sorghum, grain, grain
180.352	(b) table	Coffee bean, green[1]	Coffee, bean, green[1]
180.355	(a)(1) table	Sorghum, grain	Sorghum, grain, grain
180.356	(a) table	Cattle, mbyb, except liver	Cattle, meat byproducts, except liver
180.356	(a) table	Filbert	Hazelnut
180.356	(a) table	Goat, mbyb, except liver	Goat, meat byproducts, except liver
180.356	(a) table	Hog, mbyb, except liver	Hog, meat byproducts, except liver
180.356	(a) table	Horse, mbyb, except liver	Horse, meat byproducts, except liver
180.356	(a) table	Sheep, mbyb, except liver	Sheep, meat byproducts, except liver
180.361	(a) table	Carrots	Carrot
180.361	(a) table	Onion, dry bulb	Onion, bulb
180.364	(a) table	Berry, group 13	Berry group 13
180.364	(a) table	Galangal, root	Galangal, roots
180.364	(a) table	Vegetable, foliage of legume subgroup 7A, except soybean	Vegetable, foliage of legume, except soybean, subgroup 7A
180.364	(a) table	Vegetable, leafy, group 4	Vegetable, leafy, except brassica, group 4
180.368	(a)(1) table	Nongrass animal feed (forage, fodder, straw, and hay) group	Animal feed, nongrass, group 18
180.368	(a)(1) table	Seed and pod vegetables (except soybean)	Vegetable, seed and pod, except soybean
180.368	(a)(1) table	Sorghum, grain	Sorghum, grain, grain
180.368	(a)(3) table	Horse, meat byproducts, except, kidney and liver	Horse, meat byproducts, except kidney and liver
180.368	(a)(3) table	Onion, dry bulb	Onion, bulb

In Section	In paragraph	Remove the term or phrase	Add in its place the term or phrase
180.368	(a)(3) table	Vegetable, fruiting group 8, (except tabasco pepper)	Vegetable, fruiting, group 8, except tabasco pepper
180.368	(a)(3) table	Vegetable, leaf petioles, subgroup 4B	Leaf petioles subgroup 4B
180.368	(a)(3) table	Vegetable, legume, pea and bean, dried shelled, (except soybean) subgroup 6C	Pea and bean, dried shelled, except soybean, subgroup 6C
180.368	(a)(3) table	Vegetable, root, (except sugar beet) subgroup 1B	Vegetable, root, except sugar beet, subgroup 1B
180.368	(a)(3) table	Vegetables, tuberous and corm, subgroup 1C	Vegetable, tuberous and corm, subgroup 1C
180.368	(c) table	Onion, dry bulb	Onion, bulb
180.368	(d) table	Nongrass, animal feed (forage, fodder, straw, hay) group 18	Animal feed, nongrass, group 18
180.377	(a) (2) table	Almond, hulls	Almond, hulls
180.378	(b) table	Filbert	Hazelnut
180.378	(b) table	Onion, dry bulb	Onion, bulb
180.379	(a)(1) table	Corn, sweet, kernels and cobs	Corn, sweet, kernel plus cob with husks removed
180.379	(a)(1) table	Filbert	Hazelnut
180.379	(a)(3) table	Soybean hulls	Soybean, hulls
180.381	(a) table	Banana (including plantain)	Banana
180.381	(a) table	Onion, dry bulb	Onion, bulb
180.399	(a)(1) table	Cherry (sweet), postharvest	Cherry, sweet, postharvest
180.399	(a)(1) table	Onion, dry bulb	Onion, bulb
180.407	(a) table	Corn, sweet grain, kernel plus cob with husks removed	Corn, sweet, kernel plus cob with husks removed
180.407	(a) table	Leafy vegetables (except Brassica vegetables)	Vegetable, leafy, except brassica, group 4
180.408	(a) table	Apricot (dried)	Apricot, dried
180.408	(a) table	Grain, cereal (except wheat, barley, and oats)	Grain, cereal, group 15, except barley, oat and wheat
180.408	(a) table	Onion, dry bulb	Onion, bulb
180.408	(a) table	Peanut, nut	Peanut
180.408	(a) table	Potato waste, dried, processed	Potato, processed potato waste
180.408	(a) table	Vegetable, legume, foliage	Vegetable, foliage of legume, group 7
180.408	(d) table	Grain, cereal group (except wheat, barley, and oats), fodder	Grain, cereal, forage, fodder and straw, group 16, except barley, oat, and wheat; stover
180.408	(d) table	Grain, cereal group (except wheat, barley, and oats), forage	Grain, cereal, forage, fodder and straw, group 16, except barley, oat, and wheat; forage
180.408	(d) table	Grain, cereal group (except wheat, barley, and oats), straw	Grain, cereal, forage, fodder and straw, group 16, except barley, oat, and wheat; straw
180.410	(a) table	Beet, sugar	Beet, sugar, roots
180.411	(a)(2) table	Onion (bulb)	Onion, bulb
180.412	(a) table	Corn, sweet stover	Corn, sweet, stover
180.412	(a) table	Peppermint, tops (stems and leaves)	Peppermint, tops
180.412	(a) table	Potato flakes	Potato, granules/flakes
180.412	(a) table	Potato waste, processed (wet and dry)	Potato, processed potato waste

In Section	In paragraph	Remove the term or phrase	Add in its place the term or phrase
180.412	(a) table	Spearmint, tops (stems and leaves)	Spearmint, tops
180.412	(a) table	Sunflower meal	Sunflower, meal
180.414	(a)(1) table	Bean, dry, except cowpea	Bean, dry, except cowpea
180.414	(a)(1) table	Onion, dry bulb	Onion, bulb
180.414	(d) table	Radish, root	Radish, roots
180.414	(d) table	Radish, tops (leaves)	Radish, tops
180.415	(a) table	Leafy vegetables (except brassica vegetables) group	Vegetable, leafy, except brassica, group 4
180.415	(a) table	Onion, dry bulb	Onion, bulb
180.418	(a)(1) table	Onion, dry bulb	Onion, bulb
180.418	(a)(1) table	Vegetable, brassica, leafy group 5	Brassica, leafy greens, subgroup 5B
180.418	(a)(2) table	Berry, group 13	Berry group 13
180.418	(a)(2) table	Dried, shelled pea and bean, except soybean (Crop subgroup 6C)	Pea and bean, dried shelled, except soybean, subgroup 6C
180.418	(a)(2) table	Edible podded legume vegetables (Crop subgroup 6A)	Vegetable, legume, edible podded, subgroup 6A
180.418	(a)(2) table	Grass, forage, group 17	Grass, forage, fodder, and hay, group 17, forage
180.418	(a)(2) table	Grass, hay, group 17	Grass, forage, fodder, and hay, group 17, hay
180.418	(a)(2) table	Leafy vegetables except, Brassica	Vegetable, leafy, except brassica, group 4
180.418	(a)(2) table	Onion, dry bulb	Onion, bulb
180.418	(a)(2) table	Sorghum, grain	Sorghum, grain, grain
180.418	(a)(2) table	Succulent, shelled pea and bean (Crop subgroup 6B)	Pea and bean, succulent shelled, subgroup 6B
180.418	(a)(2) table	Vegetable, fruiting, except cucurbits (Crop Group 8)	Vegetable, fruiting, group 8
180.420	(b) table	Cattle, meat, except kidney and liver	Cattle, meat
180.420	(b) table	Goat, meat, except kidney and liver	Goat, meat
180.420	(b) table	Hog, meat, except kidney and liver	Hog, meat
180.420	(b) table	Horse, meat, except kidney and liver	Horse, meat
180.420	(b) table	Poultry liver	Poultry, liver
180.420	(b) table	Poultry, meat, except kidney and liver	Poultry, meat
180.420	(b) table	Sheep, meat, except kidney and liver	Sheep, meat
180.420	(c) table	Root crops, vegetables	Vegetable, root crop
180.430	(a) table	Peanut hulls	Peanut, hulls
180.431	(a) table	Mustard, greens	Mustard greens
180.432	(a) table	Beans, snap, succulent (excluding limas)	Bean, snap, succulent, except lima bean
180.434	(a) table	Berry, group 13	Berry group 13
180.434	(a) table	Leaf petioles, subgroup 4B	Leaf petioles subgroup 4B
180.435	(a)(1) table	Apples, wet pomace	Apple, wet pomace
180.435	(a)(1) table	Onion, dry bulb	Onion, bulb

In Section	In paragraph	Remove the term or phrase	Add in its place the term or phrase
180.435	(a)(1) table	Radish tops	Radish, tops
180.435	(a)(1) table	Sorghum, grain forage	Sorghum, grain, forage
180.435	(a)(1) table	Sorghum, grain stover	Sorghum, grain, stover
180.435	(a)(1) table	Sunflower seed	Sunflower, seed
180.436	(a)(1) table	Turnips, greens	Turnip, greens
180.438	(a)(1) table	Vegetables, fruiting, group 8	Vegetable, fruiting, group 8
180.438	(a)(1) table	Vegetables, legume, edible podded, subgroup 6A	Vegetable, legume, edible podded, subgroup 6A
180.438	(a)(2) table	Apple, wet pomace	Apple, pomace, wet
180.438	(a)(2) table	Milk fat (reflecting 0.20 ppm in whole milk	Milk, fat (reflecting 0.20 ppm in whole milk)
180.438	(a)(2) table	Sunflower, seed hulls	Sunflower, seed, hulls
180.440	(a) table	Corn, fresh (including sweet K and corn with husks removed (CWHR)	Corn, sweet, kernel plus cob with husks removed
180.441	(a)(1) table	Soybean flour	Soybean, flour
180.441	(a)(4) table	Beet, sugar root	Beet, sugar, roots
180.442	(a)(1) table	Horse, mby	Horse, meat byproducts
180.443	(a) table	Fruit, stone (except cherry)	Fruit, stone, except cherry
180.446	(a)(1) table	Grapes	Grape
180.446	(a)(1) table	Persimmons	Persimmon
180.447	(a)(1) table	Soybeans	Soybean
180.447	(a)(2) table	Alfalfa, seed screening	Alfalfa, seed screenings
180.447	(a)(2) table	Animal feed, nongrass, group, forage	Animal feed, nongrass, group 18, forage
180.447	(a)(2) table	Animal feed, nongrass, group, hay	Animal feed, nongrass, group 18, hay
180.447	(c) table	Endive (escorole)	Endive
180.449	(a) table	Cucurbits (cucumber, mellons, and squashes)	Vegetable, cucurbit, group 9
180.449	(a) table	Herbs, crop subgroup 19A (except chives)	Herb subgroup 19A, except chive
180.449	(a) table	Vegetable, fruiting, crop group 8	Vegetable, fruiting, group 8
180.449	(a) table	Vegetable, leafy, except Brassica, crop group 4	Vegetable, leafy, except brassica, group 4
180.450	(a) table	Sorghum, grain	Sorghum, grain, grain
180.451	(c) table	Grass, forage, fodder and hay, group (except Bermudagrass); forage	Grass, forage, fodder and hay, group 17, except bermudagrass; forage
180.451	(c) table	Grass, forage, fodder and hay, group (except Bermudagrass); hay	Grass, forage, fodder and hay, group 17, except bermudagrass; hay
180.452	(a) table	Corn, fresh (including sweet kernels plus cobs with husks removed)	Corn, sweet, kernel plus cob with husks removed
180.454	table	Corn, sweet, fodder (stover)	Corn, sweet, stover
180.458	(a)(3) table	Onion, dry bulb	Onion, bulb
180.464	(a) table	Onion, dry bulb	Onion, bulb
180.464	(a) table	Peanut, nutmeat	Peanut
180.464	(a) table	Sorghum, grain	Sorghum, grain, grain
180.466	(a) table	Melon subgroup 9-A	Melon subgroup 9A

In Section	In paragraph	Remove the term or phrase	Add in its place the term or phrase
180.466	(a) table	Milkfat (reflecting 0.08 ppm in whole milk)	Milk, fat (reflecting 0.08 ppm in whole milk)
180.468	table	Beans (dry)	Bean, dry
180.472	(a) table	Coffee, green bean	Coffee, bean, green
180.472	(a) table	Oats, forage	Oat, forage
180.472	(a) table	Oats, grain	Oat, grain
180.472	(a) table	Oats, hay	Oat, hay
180.472	(a) table	Oats, straw	Oat, straw
180.472	(a) table	Potato, waste	Potato, processed potato waste
180.472	(a) table	Sorghum, grain	Sorghum, grain, grain
180.472	(a) table	Sorgum, stover	Sorghum, grain, stover
180.472	(a) table	Vegetable, legume, except soybean, group 6	Vegetable, legume, group 6, except soybean
180.472	(d) table	Forage, fodder, and straw of Grain, cereal crop group (forage)	Grain, cereal, forage, fodder and straw, group 16; forage
180.472	(d) table	Forage, fodder, and straw of Grain, cereal crop group (hay)	Grain, cereal, forage, fodder and straw, group 16; hay
180.472	(d) table	Forage, fodder, and straw of Grain, cereal crop group (stover)	Grain, cereal, forage, fodder and straw, group 16; stover
180.472	(d) table	Forage, fodder, and straw of Grain, cereal crop group (straw)	Grain, cereal, forage, fodder and straw, group 16; straw
180.472	(d) table	Vegetable, legume, crop group 6	Vegetable, legume, group 6
180.473	(a)(1) table	Potato granules and flakes	Potato, granules/flakes
180.473	(a)(2) table	Aspirated grain fractions	Grain, aspirated fractions
180.473	(a)(2) table	Beet, sugar, tops (leaves)	Beet, sugar, tops
180.473	(a)(2) table	Rice, hull	Rice, hulls
180.476	(a)(1) table	Filbert	Hazelnut
180.477	(a) table	Cotton gin by products	Cotton, gin byproducts
180.479	(a)(2) table	Corn, sweet, fodder/stover	Corn, sweet, stover
180.479	(a)(2) table	Sorghum, grain, fodder/stover	Sorghum, grain, stover
180.481	table	Grain, cereal group (except rice and wild rice), fodder	Grain, cereal, forage, fodder and straw, group 16, except rice and wild rice; stover
180.481	table	Grain, cereal group (except rice and wild rice), for-age	Grain, cereal, forage, fodder and straw, group 16, except rice and wild rice; forage
180.481	table	Grain, cereal group (except rice and wild rice), grain	Grain, cereal, group 15, except rice and wild rice
180.481	table	Grain, cereal group (except rice and wild rice), hay	Grain, cereal, forage, fodder and straw, group 16, except rice and wild rice; hay
180.481	table	Grain, cereal group (except rice and wild rice), straw	Grain, cereal, forage, fodder and straw, group 16, except rice and wild rice; straw
180.482	(a)(1) table	Vegetable, fruiting (Except cucurbits)	Vegetable, fruiting, group 8
180.482	(a)(1) table	Vegetable, tuberous and corm (except potato), subgroup 1D	Vegetable, tuberous and corm, except potato, subgroup 1D
180.482	(d) table	Forage, fodder, hay and straw of grain, cereal, group 16	Grain, cereal, forage, fodder and straw, group 16

In Section	In paragraph	Remove the term or phrase	Add in its place the term or phrase
180.482	(d) table	Forage, fodder, straw and hay of non-grass animal feed, group 18	Animal feed, nongrass, group 18
180.484	(a)(1) table	Peanut meal	Peanut, meal
180.484	(a)(1) table	Poultry (including turkeys), fat	Poultry, fat
180.484	(a)(1) table	Poultry (including turkeys), meat	Poultry, meat
180.484	(a)(1) table	Poultry (including turkeys), meat byproducts	Poultry, meat byproducts
180.486	table	Corn, sweet, stover (fodder)	Corn, sweet, stover
180.489	(a) table	Crop group 2: Leaves of root and tuber vegetables (human food or animal feed (except radish) group (of which no more than 0.20 ppm is TSM)	Vegetable, leaves of root and tuber, group 2, except radish (of which no more than 0.20 ppm is TMS)
180.489	(a) table	Crop group 8: Vegetable, fruiting (except cucurbits) group	Vegetable, fruiting, group 8
180.489	(a) table	Crop subgroup 1-A: Root vegetables (except radish) subgroup (of which no more than 0.10 ppm is TSM)	Vegetable, root, subgroup 1A, except radish (of which no more than 0.10 ppm is TMS)
180.489	(a) table	Crop sugroup 1-C: Tuberous and corm vegetables subgroup (of which no more than 0.50 ppm is TSM)	Vegetable, tuberous and corm, subgroup 1C (of which no more than 0.50 ppm is TMS)
180.489	(a) table	Crop subgroup 6-A: Edible-podded legume vegetables subgroup (of which no more than 0.3 ppm is TSM)	Vegetable, legume, edible podded, subgroup 6A (of which no more than 0.3 ppm is TMS)
180.489	(a) table	Crop subgroup 6-B: Succulent shelled pea and bean subgroup (of which no more than 0.1 ppm is TSM)	Pea and bean, succulent shelled, subgroup 6B (of which no more than 0.1 ppm is TMS)
180.489	(a) table	Crop subgroup 6-C: Dried shelled pea and bean (except soybean and animal feed) subgroup (of which no more than 1.5 ppm is TSM)	Pea and bean, dried shelled, except soybean, subgroup 6C (of which no more than 1.5 ppm is TMS)
180.489	(a) table	Prune (of which no more than 0.05 ppm is TMS)	Plum, prune (of which no more than 0.05 ppm is TMS)
180.489	(a) table	Wheat shorts (of which no more than 0.5 ppm is TMS)	Wheat, shorts (of which no more than 0.5 ppm is TMS)
180.493	(d) table	Grain, cereal group, fodder	Grain, cereal, forage, fodder and straw, group 16, stover
180.493	(d) table	Grain, cereal group, forage	Grain, cereal, forage, fodder and straw, group 16, forage
180.493	(d) table	Grain, cereal group, grain	Grain, cereal, group 15
180.493	(d) table	Grain, cereal group, hay	Grain, cereal, forage, fodder and straw, group 16, hay
180.493	(d) table	Grain, cereal group, straw	Grain, cereal, forage, fodder and straw, group 16, straw
180.494	(a) table	Hog meat byproducts	Hog, meat byproducts
180.494	(a) table	Horse meat	Horse, meat
180.494	(a) table	Horse meat byproducts	Horse, meat byproducts
180.494	(a) table	Nut tree, group 14	Nut, tree, group 14
180.494	(a) table	Sheep, meat by-product	Sheep, meat byproducts
180.495	(a) table	Cranberry subgroup 13A	Caneberry subgroup 13A
180.495	(a) table	Herb, dried, subgroup	Herb subgroup 19A, dried

In Section	In paragraph	Remove the term or phrase	Add in its place the term or phrase
180.495	(a) table	Herb, fresh, subgroup	Herb subgroup 19A, fresh
180.495	(a) table	Leafy vegetables (except Brassica vegetables group)	Vegetable, leafy, except brassica, group 4
180.495	(a) table	Legume vegetables, dried shell pea and bean (Crop Subgroup 6C)	Pea and bean, dried shelled, except soybean, subgroup 6C
180.495	(a) table	Legume vegetables, edible podded (Crop Subgroup 6A)	Vegetable, legume, edible podded, subgroup 6A
180.495	(a) table	Legume vegetables, succulent shelled pea and bean (Crop Subgroup 6B)	Pea and bean, succulent shelled, subgroup 6B
180.495	(a) table	Vegetable, cucurbit (cucumber, melon, squashes), group 9	Vegetable, cucurbit, group 9
180.497	(b) table	Grain, cereal group (except rice, wild rice, sweet corn and wheat), forage	Grain, cereal, forage, fodder and straw, group 16, except rice, sweet corn, wheat, and wild rice; forage
180.497	(b) table	Grain, cereal group (except rice, wild rice, sweet corn and wheat), hay	Grain, cereal, forage, fodder and straw, group 16, except rice, sweet corn, wheat, and wild rice; hay
180.497	(b) table	Grain, cereal group (except rice, wild rice, sweet corn and wheat), stover (fodder)	Grain, cereal, forage, fodder and straw, group 16, except rice, sweet corn, wheat, and wild rice; stover
180.497	(b) table	Grain, cereal group (except rice, wild rice, sweet corn and wheat), straw	Grain, cereal, forage, fodder and straw, group 16, except rice, sweet corn, wheat, and wild rice; straw
180.497	(b) table	Grain, cereal group (except rice, wild rice, sweet corn and wheat, grain	Grain, cereal, group 15, except rice, sweet corn, wheat, and wild rice
180.498	(d) table	Grain, cereal (excluding sweet corn), Bran	Grain, cereal, group 15, except sweet corn; bran
180.498	(d) table	Grain, cereal (excluding sweet corn), Forage	Grain, cereal, forage, fodder and straw, group 16, except sweet corn; forage
180.498	(d) table	Grain, cereal (excluding sweet corn), Grain	Grain, cereal, group 15, except sweet corn
180.498	(d) table	Grain, cereal (excluding sweet corn), Hay	Grain, cereal, forage, fodder and straw, group 16, except sweet corn; hay
180.498	(d) table	Grain, cereal (excluding sweet corn), Stover	Grain, cereal, forage, fodder and straw, group 16, except sweet corn; stover
180.498	(d) table	Grain, cereal (excluding sweet corn), Straw	Grain, cereal, forage, fodder and straw, group 16, except sweet corn; straw
180.500	(a)	Cattle, meat byproducts (except kidney)	Cattle, meat byproducts, except kidney
180.500	(a)	Goats, meat byproducts (except kidney)	Goat, meat byproducts, except kidney
180.500	(a)	Horses, kidney	Horse, kidney
180.500	(a)	Horses, meat byproducts (except kidney)	Horse, meat byproducts, except kidney
180.500	(a)	Sheep, meat byproducts (except kidney)	Sheep, meat byproducts, except kidney
180.505	(a)(1) table	Vegetable, fruiting (except Cucurbits), group 8	Vegetable, fruiting, group 8
180.507	(a)(1) table	Onion, dry bulb	Onion, bulb
180.507	(a)(1) table	Vegetable, legume, edible podded, subgroup, except soybean	Vegetable, legume, edible podded, subgroup 6A, except soybean
180.510	(a)(1) table	Fig, dried	Fig, dried fruit
180.510	(a)(1) table	Onion, dry bulb	Onion, bulb
180.510	(a)(1) table	White sapote	Sapote, white

In Section	In paragraph	Remove the term or phrase	Add in its place the term or phrase
180.510	(a)(2) text	all foods	all food commodities
180.511	(a) table	Almond hulls	Almond, hulls
180.511	(a) table	Cotton seed	Cotton, undelinted seed
180.511	(a) table	Custard, apple	Custard apple
180.511	(a) table	Passion fruit	Passionfruit
180.515	(a) table	Berry, group 13	Berry group 13
180.515	(a) table	Cotton, gin by products	Cotton, gin byproducts
180.515	(a) table	Cotton, meals	Cotton, meal
180.515	(a) table	Grain, cereal, hay	Grain, cereal, forage, fodder and straw, group 16, hay
180.515	(a) table	Grain, cereal, stover	Grain, cereal, forage, fodder and straw, group 16, stover
180.515	(a) table	Grain, cereal, straw (excluding rice)	Grain, cereal, forage, fodder and straw, group 16, except rice; straw
180.515	(a) table	Herb and Spices, group 19	Herbs and spices group 19
180.515	(a) table	Kiwi fruit	Kiwifruit
180.515	(a) table	Pusalan	Pulasan
180.515	(a) table	Sugar, apple	Sugar apple
180.515	(a) table	Vegetable, brassica, leafy, group 05	Vegetable, brassica, leafy, group 5
180.515	(a) table	Vegetable, bulb, group 03	Vegetable, bulb, group 3
180.515	(a) table	Vegetable, foliage of legume (except soybean), group 07	Vegetable, foliage of legume, except soybean, subgroup 7A
180.515	(a) table	Vegetable, leafy, except brassica, group 04	Vegetable, leafy, except brassica, group 4
180.515	(a) table	Vegetable, leaves of root and tuber, group 02	Vegetable, leaves of root and tuber, group 2
180.515	(a) table	Vegetable, legume, group 06	Vegetable, legume, group 6
180.515	(a) table	Vegetable, root and tuber, group 01	Vegetable, root and tuber, group 1
180.515	(a) table	Wax, Jambu	Wax jambu
180.516	(a) table	Citrus, crop group 10	Fruit, citrus, group 10
180.516	(a) table	Forage, fodder, and straw of Grain, cereal	Grain, cereal, forage, fodder and straw, group 16
180.516	(a) table	Herb and spicegroup 19	Herbs and spices group 19
180.516	(a) table	Herb, dried, subgroup 19A	Herb subgroup 19A, dried
180.516	(a) table	Herb, fresh, subgroup 19A	Herb subgroup 19A, fresh
180.516	(a) table	Leafy vegetables except Brassica	Vegetable, leafy, except brassica, group 4
180.516	(a) table	Non-grass animal feed	Animal feed, nongrass, group 18
180.516	(a) table	Onion, dry bulb	Onion, bulb
180.517	(a) table	Hog Fat	Hog, fat
180.517	(a) table	Hog Liver	Hog, liver
180.517	(a) table	Hog Meat Byproducts, except liver	Hog, meat byproducts, except liver
180.517	(a) table	Poultry Fat	Poultry, fat
180.517	(a) table	Poultry Meat	Poultry, meat

In Section	In paragraph	Remove the term or phrase	Add in its place the term or phrase
180.518	(a)(1) table	Fruit, citrus, group 10 (post-harvest)	Fruit, citrus, group 10, postharvest
180.518	(a)(1) table	Fruit, stone (except cherry), group 12	Fruit, stone, group 12, except cherry
180.518	(a)(1) table	Onion, dry bulb	Onion, bulb
180.518	(a)(2) table	Cattle, mbyp (except kidney)	Cattle, meat byproducts, except kidney
180.518	(a)(2) table	Goat, mbyp (except kidney)	Goat, meat byproducts, except kidney
180.518	(a)(2) table	Horse, mbyp (except kidney)	Horse, meat byproducts, except kidney
180.518	(a)(2) table	Sheep, mbyp (except kidney)	Sheep, meat byproducts, except kidney
180.532	(a)(1) table	Almond nutmeats	Almond
180.532	(a)(1) table	Herb, subgroup 19A, dried	Herb subgroup 19A, dried
180.532	(a)(1) table	Herb, subgroup 19A, fresh	Herb subgroup 19A, fresh
180.532	(a)(2) table	Onion, dry bulb	Onion, bulb
180.533	(a) table	Sorghum, grain	Sorghum, grain, grain
180.544	(a)(1) table	Leaf petioles subgroup	Leaf petioles subgroup 4B
180.544	(a)(1) table	Peppermint	Peppermint, tops
180.544	(a)(1) table	Spearmint	Spearmint, tops
180.544	(a)(1) table	Strawberries	Strawberry
180.544	(a)(1) table	Vegetable, foliage of legume, (except soybean) subgroup 7A	Vegetable, foliage of legume, except soybean, subgroup 7A
180.544	(b) table	Sorghum, grain	Sorghum, grain, grain
180.544	(d)(2) table	Animal feed, non-grass, group	Animal feed, nongrass, group 18
180.544	(d)(2) table	Grain, cereal, forage, fodder and straw, group	Grain, cereal, forage, fodder and straw, group 16
180.544	(d)(2) table	Herb and spice, group	Herbs and spices group 19
180.551	(a)(2) table	Cotton undelinted seed	Cotton, undelinted seed
180.553	(a) table	Leafy greens, subgroup 4A, except spinach	Leafy greens subgroup 4A, except spinach
180.554	(a)(1) table	Pecans	Pecan
180.555	(a) table	Hog, meat,	Hog, meat
180.556	(a) table	Vegetable, leafy, execpt brassica, group (Crop Group 4)	Vegetable, leafy, except brassica, group 4
180.561	(b) table	Onion, dry bulb	Onion, bulb
180.562	(a) table	Cattle, meat byproducts except liver	Cattle, meat byproducts, except liver
180.562	(a) table	Goat, meat byproducts except liver	Goat, meat byproducts, except liver
180.562	(a) table	Hog, meat byproducts except liver	Hog, meat byproducts, except liver
180.562	(a) table	Horse, meat by-products except liver	Horse, meat byproducts, except liver
180.562	(a) table	Sheep, meat byproducts except liver	Sheep, meat byproducts, except liver
180.565	(a) table	Bushberry, subgroup 13B	Bushberry subgroup 13B
180.565	(a) table	Peppermint	Peppermint, tops
180.565	(a) table	Spearmint	Spearmint, tops
180.566	(a)(1) table	Cotton undelinted seed	Cotton, undelinted seed

In Section	In paragraph	Remove the term or phrase	Add in its place the term or phrase
180.566	(a)(2) table	Cattle, meat byproducts (excluding liver and kidney)	Cattle, meat byproducts, except kidney and liver
180.566	(a)(2) table	Goat, meat byproducts (excluding liver and kidney	Goat, meat byproducts, except kidney and liver
180.566	(a)(2) table	Horse, meat byproducts (excluding liver and kidney)	Horse, meat byproducts, except kidney and liver
180.566	(a)(2) table	Sheep, meat byproducts (excluding liver and kidney	Sheep, meat byproducts, except kidney and liver
180.567	(a)(2) table	Potato, granule/flakes	Potato, granules/flakes
180.568	(a) table	Almond (hulls)	Almond, hulls
180.568	(a) table	Almond (nutmeat)	Almond
180.568	(a) table	Onion (dry bulb)	Onion, bulb
180.568	(a) table	Peppermint (tops)	Peppermint, tops
180.568	(a) table	Shallot (bulb)	Shallot, bulb
180.568	(a) table	Spearmint (tops)	Spearmint, tops
180.568	(a) table	Sugarcane (cane)	Sugarcane, cane
180.568	(a) table	Tuberous/corm vegetables (Subgroup 1C)	Vegetable, tuberous and corm, subgroup 1C
180.573	(a)(1) table	Cotton, undelinated seed	Cotton, undelinted seed
180.574	(a)(2) table	Wine grape[1]	Grape, wine[1]
180.575	(a)(1) table	Sorghum, grain, postharvest	Sorghum, grain, grain, postharvest
180.578	(a)(1) table	Fruit, pome group	Fruit, pome, group 11
180.579	(a)(1) table	Onion, dry bulb	Onion, bulb
180.579	(a)(1) table	Vegetable, tuberous and corm, subgroup 01C	Vegetable, tuberous and corm, subgroup 1C
180.579	(a)(2) table	Beef, fat	Cattle, fat
180.579	(a)(2) table	Beef, meat	Cattle, meat
180.579	(a)(2) table	Beef, meat byproducts	Cattle, meat byproducts
180.579	(a)(2) table	Sheep, meat byproduct	Sheep, meat byproducts
180.581	(a) table	Tomatoes[1]	Tomato[1]
180.582	(a)(1) table	Brassica, head and stem, subgroup	Brassica, head and stem, subgroup 5A
180.582	(a)(1) table	Brassica, leafy greens, subgroup	Brassica, leafy greens, subgroup 5B
180.582	(a)(1) table	Fruit, pome, group	Fruit, pome, group 11
180.582	(a)(1) table	Legume, forage, except peanut and soybean, subgroup	Vegetable, foliage of legume, except soybean, subgroup 7A
180.582	(a)(1) table	Peppermint	Peppermint, tops
180.582	(a)(1) table	Spearmint	Spearmint, tops
180.582	(a)(1) table	Vegetable, bulb	Vegetable, bulb, group 3
180.582	(a)(1) table	Vegetable, leafy, except brassica, group	Vegetable, leafy, except brassica, group 4
180.582	(a)(1) table	Vegetable, leaves of root and tuber, except sugar beet	Vegetable, leaves of root and tuber, group 2, except sugar beet
180.586	(a) table	Pome fruit	Fruit, pome
180.586	(d) table	Animal feed, nongrass	Animal feed, nongrass, group 18

In Section	In paragraph	Remove the term or phrase	Add in its place the term or phrase
180.586	(d) table	Grain, cereal, forage, fodder and straw	Grain, cereal, forage, fodder and straw, group 16
180.587	(a) table	Vegetable, cucurbits, group 9	Vegetable, cucurbit, group 9
180.587	(a) table	Vegetable, fruiting, group 8 except tomato	Vegetable, fruiting, group 8, except tomato
180.588	(b) table	Vegetable, cucurbit, subgroup 9A	Melon subgroup 9A
180.589	(a)(1) table	Apple, wet, pomace	Apple, wet pomace
180.589	(a)(1) table	Aspirated grain fractions	Grain, aspirated fractions
180.589	(a)(1) table	Berries, group 13	Berry group 13
180.589	(a)(1) table	Fruit, pome, crop group, group 11	Fruit, pome, group 11
180.589	(a)(1) table	Hops, cones, dried	Hop, dried cones
180.589	(a)(1) table	Leafy greens, subgroup 4A, except head and leaf lettuce	Leafy greens subgroup 4A, except head lettuce and leaf lettuce
180.589	(a)(1) table	Leafy petioles, subgroup 4B	Leaf petioles subgroup 4B
180.589	(a)(1) table	Vegetable, Brassica leafy, head and stem, subgroup 5A	Brassica, head and stem, subgroup 5A
180.589	(a)(1) table	Vegetable, Brassica leafy, leafy greens, subgroup 5B	Brassica, leafy greens, subgroup 5B
180.589	(a)(1) table	Vegetable, legume, dried shell pea and bean (except soybean), subgroup 6C, except cowpea, field pea, and grain lupin	Pea and bean, dried shelled, except soybean, subgroup 6C, except cowpea, field pea and grain lupin
180.589	(a)(2) table	Goat, meat, byproducts	Goat, meat byproducts
180.589	(a)(2) table	Poultry, meat, byproduct	Poultry, meat byproducts
180.589	(d) table	Grain, cereal, forage, fodder and straw, group 16, fodder	Grain, cereal, forage, fodder and straw, group 16, stover
180.589	(d) table	Vegetable, leafy, group 4, except lettuce, celery and spinach	Vegetable, leafy, except brassica, group 4, except celery, lettuce and spinach
180.589	(d) table	Vegetable, legume, foliage, group 7, forage	Vegetable, foliage of legume, group 7, forage
180.589	(d) table	Vegetable, legume, foliage, group 7, hay	Vegetable, foliage of legume, group 7, hay
180.589	(d) table	Vegetable, legume, foliage, group 7, vines	Vegetable, foliage of legume, group 7, vines
180.589	(d) table	Vegetable, root and tuber, leaves, Group 2	Vegetable, leaves of root and tuber, group 2
180.598	(a) table	Cattle, meat byproducts, except liver and kidney	Cattle, meat byproducts, except kidney and liver
180.598	(a) table	Goat, meat byproducts except liver and kidney	Goat, meat byproducts, except kidney and liver
180.598	(a) table	Horse, meat byproducts, except liver and kidney	Horse, meat byproducts, except kidney and liver
180.598	(a) table	Sheep, meat byproducts, except liver and kidney	Sheep, meat byproducts, except kidney and liver
180.598	(a) table	Vegetables, tuberous and corn, subgroup 1C	Vegetable, tuberous and corm, subgroup 1C
180.601	(a) table	Cucurbit vegetables (Group 9)	Vegetable, cucurbit, group 9
180.603	(a)(1) table	Vegetable, cucubit, group 9	Vegetable, cucurbit, group 9
180.603	(a)(2) table	Cattle, mbyp	Cattle, meat byproducts
180.603	(a)(2) table	Goat, mbyp	Goat, meat byproducts
180.603	(a)(2) table	Hog, mbyp	Hog, meat byproducts
180.603	(a)(2) table	Horse, mbyp	Horse, meat byproducts
180.603	(a)(2) table	Sheep, mbyp	Sheep, meat byproducts

In Section	In paragraph	Remove the term or phrase	Add in its place the term or phrase
180.607	(a)(1) table	Vegetable, brassica, leafy greens, subgroup 5B	Brassica, leafy greens, subgroup 5B
180.607	(a)(1) table	Vegetable, leafy greens, subgroup 4A	Leafy greens subgroup 4A
180.610	(a)(1) table	Aspirated grain fractions	Grain, aspirated fractions
180.610	(a)(2) table	Cattle, meat byproducts, excluding kidney	Cattle, meat byproducts, except kidney
180.610	(a)(2) table	Goat, meat byproducts, excluding kidney	Goat, meat byproducts, except kidney
180.610	(a)(2) table	Horse, meat byproducts, excluding kidney	Horse, meat byproducts, except kidney
180.610	(a)(2) table	Sheep, meat byproducts, excluding kidney	Sheep, meat byproducts, except kidney
180.613	(a)(1) table	Potato, granular/flakes	Potato, granules/flakes
180.613	(a)(1) table	Vegetable, cucurbit, group	Vegetable, cucurbit, group 9
180.613	(a)(1) table	Vegetable, fruiting, group	Vegetable, fruiting, group 8
180.613	(a)(1) table	Vegetable, leafy except Brassica group 4, except spinach	Vegetable, leafy, except brassica, group 4, except spinach
180.613	(a)(2) table	Sheep, meat by products	Sheep, meat byproducts
180.614	(a) table	Vegetable, fruiting group 8[1]	Vegetable, fruiting, group 8[1]
180.617	(b) table	Aspirated grain fractions	Grain, aspirated fractions

[FR Doc. E7–18159 Filed 9–17–07; 8:45 a.m.]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–8469–6]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion for the Grand Street Mercury Superfund Site from the National Priorities List.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Region II Office announces the deletion of the Grand Street Mercury Superfund Site from the National Priorities List (NPL). The Grand Street Mercury Site is located in the city of Hoboken, Hudson County, New Jersey. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of New Jersey, through the Department of Environmental Protection (NJDEP) have determined that all appropriate response actions have been implemented and no further response actions are required. In addition, EPA and the NJDEP have determined that the remedial action taken at the Grand Street Mercury Site is protective of public health, welfare, and the environment.

DATES: *Effective Date:* September 18, 2007.

FOR FURTHER INFORMATION CONTACT: Farnaz Saghafi, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, New York 10007–1866, (212) 637–4408.

SUPPLEMENTARY INFORMATION: To be deleted from the NPL is: The Grand Street Mercury Superfund site, City of Hoboken, Hudson County, New Jersey.

A Notice of Intent to Delete for the Grand Street Mercury Site was published in the **Federal Register** on June 28, 2007. The closing date for comments on the Notice of Intent to Delete was July 28, 2007. No comments were received by EPA on the proposed deletion during the public comment period. EPA's decision to propose the site for deletion is based on the successful implementation of the remedy which included demolition of the former industrial building and excavation and restoration of contaminated soils, thereby mitigating risks to human health and the environment. The monitoring data collected, since the construction of the remedy was completed in December 2004, confirmed that the remedy is protective of human health and the environment. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, any site or portion thereof deleted from the NPL remains eligible for remedial actions in the unlikely event that conditions at the site warrant such action in the future. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

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

Dated: August 17, 2007.

Alan J. Steinberg,

Regional Administrator—Region II.

■ For the reasons set out in the preamble, part 300, Chapter I of Title 40 of the Code of Federal Regulations, is amended as follows:

PART 300—[AMENDED]

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

Authority: 42 U.S.C. 9601–9675; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing ''Grand Street Mercury, Hoboken, NJ.''

[FR Doc. E7–18363 Filed 9–17–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[EPA–HQ–OPPT–2005–0042; FRL–8143–4]

RIN 2070–AB20

Polychlorinated Biphenyls; Manufacturing (Import) Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With certain exceptions, section 6(e)(3) of the Toxic Substances Control Act (TSCA) bans the manufacture, processing, and distribution in commerce of polychlorinated biphenyls (PCBs). For purposes of TSCA, ''manufacture'' is defined to include import into the Customs Territory of the United States. One of these exceptions is TSCA section 6(e)(3)(B), which gives EPA authority to grant petitions to perform these activities for a period of up to 12 months, provided EPA can make certain findings by rule. On July 21, 2005, the United States Defense Logistics Agency (DLA), a component of the United States Department of Defense (DOD), submitted a petition to EPA to import foreign-manufactured PCBs that DOD currently owns in Japan for disposal in the United States. In this document, EPA is granting DLA's petition. This decision to grant the petition allows DLA to manufacture (i.e., import) certain PCBs for disposal.

DATES: This final rule is effective January 7, 2008.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2005–0042. All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Tom Simons, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0517; e-mail address: *simons.tom@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action primarily applies to the petitioner, the DLA. However, you may be potentially affected by this action if you process, distribute in commerce, or dispose of PCB waste generated by others, i.e., you are an EPA-permitted PCB waste handler. Potentially affected categories and entities include, but are not necessarily limited to:

• Waste treatment and disposal (NAICS code 5622), e.g., facilities that store or dispose of PCB waste.

• Materials recovery facilities (NAICS code 56292), e.g., facilities that process and/or recycle metals.

• Public administration (NAICS code 92), e.g., the petitioning agency (i.e., the DLA).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR part 761. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** of April 30, 2007 (Ref. 1), the Agency proposed to grant DLA's petition to import PCB waste for disposal. The Agency received no comments on that proposal. In this final rule, the Agency is granting a petition submitted by DLA to import PCB waste for disposal. In the absence of an exemption, import of this waste would be banned by section 6(e)(3) of TSCA. The petition, dated July 21, 2005, is for an exemption to import certain foreign-generated PCBs owned by DOD that are currently in use or storage in Japan. (The term ''foreign-generated PCBs'' is used to identify those PCBs that DOD acquired from foreign sources and that are subject to the TSCA ban on import.)

On April 16, 2001, DLA submitted a similar petition to import over four million pounds of foreign-generated PCB waste. EPA granted that petition in a final rule document published in the **Federal Register** of January 31, 2003 (Ref. 2).

B. What is the Agency's Authority for Taking this Action?

Section 6(e) of TSCA, 15 U.S.C. 2605(e), generally prohibits the manufacture (which includes import) of PCBs after January 1, 1979, the processing and distribution in commerce of PCBs after July 1, 1979, and most uses of PCBs after October 11, 1977. Section 6(e)(3)(A) of TSCA prohibits the manufacture, processing, and distribution in commerce of PCBs except for the distribution in commerce of PCBs that were sold for purposes other than resale before July 1, 1979. Section 6(e)(1) of TSCA also authorizes EPA to regulate the disposal of PCBs consistent with the provisions in TSCA section 6(e)(2) and (3).

Section 6(e)(3)(B) of TSCA provides that any person may petition the Administrator for an exemption from the prohibition on the manufacture, processing, and distribution in commerce of PCBs. The Administrator may by rule grant an exemption if the Administrator finds that:

> i. an unreasonable risk of injury to health or the environment would not result, and ii. good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl. (15 U.S.C. 2605(e)(3)(B)(i)-(ii)).

The Administrator may prescribe terms and conditions for an exemption and may grant an exemption for a period of not more than 1 year from the date the petition is granted. In addition, TSCA section 6(e)(4) requires that a rule under TSCA section 6(e)(3)(B) be promulgated in accordance with TSCA section 6(c)(2), (3), and (4), which provide for a proposed rule, the opportunity for an informal public hearing, and a final rule.

EPA's procedures for rulemaking under TSCA section 6 are found under 40 CFR part 750. This part includes Subpart B—Interim Procedural Rules for Manufacturing Exemptions, which describes the required content for manufacturing exemption petitions and the procedures EPA follows in rulemaking on these petitions. These rules are codified at 40 CFR 750.10 through 750.21.

III. Findings Necessary to Grant Petitions

A. No Unreasonable Risk Finding

Before granting an exemption petition, TSCA section 6(e)(3)(B)(i) requires the Administrator to find that granting an exemption would not result in an unreasonable risk of injury to health or the environment in the United States. EPA has interpreted this provision to require a petitioner to demonstrate that the activity will not pose an unreasonable risk. (See 40 CFR 750.11.)

To determine whether a risk is unreasonable, EPA balances the probability that harm will occur to health or the environment against the benefits to society from granting or denying each petition. See generally, 15 U.S.C. 2605(c)(1). Specifically, EPA considers the following factors:

1. *Effects of PCBs on human health and the environment*. In deciding whether to grant an exemption, EPA considers the magnitude of exposure and the effects of PCBs on humans and the environment. The following discussion summarizes EPA's assessment of these factors. A more complete discussion of these factors is provided in the preamble to the 1988 PCB proposed rule document published in the **Federal Register** of August 24, 1988 (Ref. 3).

i. *Health effects*. EPA has determined that PCBs cause significant human health effects including cancer, immune system suppression, liver damage, skin irritation, and endocrine disruption. PCBs exhibit neurotoxicity as well as reproductive and developmental toxicity. PCBs are readily absorbed through the skin and are absorbed at even faster rates when inhaled. Because PCBs are stored in animal fatty tissue, humans are also exposed to PCBs through ingestion of animal products.

ii. *Environmental effects*. Certain PCB congeners are among the most stable chemicals known, and decompose very slowly once they are released in the environment. PCBs are absorbed and stored in the fatty tissue of higher organisms as they bioaccumulate up the food chain through invertebrates, fish, and mammals. Significantly, bioaccumulated PCBs appear to be even more toxic than those found in the ambient environment, since the more toxic PCB congeners are more persistent and thus more likely to be retained. PCBs also have reproductive and other toxic effects in aquatic organisms, birds, and mammals.

iii. *Risks*. Toxicity and exposure are the two basic components of risk. EPA has concluded that any exposure of humans or the environment to PCBs may be significant, depending on such factors as the quantity of PCBs involved in the exposure, the likelihood of exposure to humans and the environment, and the effect of exposure. Minimizing exposure to PCBs should minimize any eventual risk. EPA has previously determined that some activities, including the disposal of PCBs in accordance with 40 CFR part 761, pose no unreasonable risks. Other activities, such as long-term storage of PCB waste, are generally considered by EPA to pose unreasonable risks.

2. *Benefits and costs*. The benefits to society of granting an exemption vary, depending on the activity for which the exemption is requested. The reasonably ascertainable costs of denying an exemption vary, depending on the individual petition. As discussed in Unit IV., EPA has taken benefits and costs into consideration when evaluating this exemption petition.

B. Good Faith Efforts Finding

Section 6(e)(3)(B)(ii) of TSCA also requires the Administrator to find that "good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for [PCBs]." EPA has interpreted this provision to require that a petitioner has the burden of demonstrating that it has made the requisite good faith efforts. (40 CFR 750.11) EPA considers several factors in determining whether good faith efforts have been made. For each petition, EPA considers the kind of exemption the petitioner is requesting and whether the petitioner expended time and effort to develop or search for a substitute. In each case, the burden is on the petitioner to show specifically what they did to substitute non-PCB material for PCBs or to show why it was not feasible to substitute non-PCBs for PCBs.

To satisfy this finding for requests for an exemption to import PCBs for disposal, a petitioner must show why such activity must occur in the United States and what steps will be taken to eliminate the need to import PCBs in the future. While requiring a petitioner to demonstrate that good faith efforts to develop a substitute for PCBs makes sense when dealing with traditional manufacture and distribution exemption petitions, the issue of the development of substitute chemicals seems to have little bearing on whether to grant a petition for exemption that would allow the import into the United States for disposal of waste generated by DOD overseas. EPA believes the more relevant "good faith" issue for such an exemption request is whether the disposal of the waste could and/or should occur outside the United States.

IV. Final Disposition of This Exemption Petition

A. The Petition: July 21, 2005 Petition to Import PCBs Located in Japan

On July 21, 2005, DLA submitted a petition seeking a 1–year exemption to import PCBs and PCB items currently in temporary storage at U.S. military installations in Japan. In revised figures provided in November 2006 (Ref. 5), DLA estimates that as much as 1,328,482 pounds of waste contaminated with PCBs could be generated in Japan through the calendar year 2008. The material in Japan consists of liquids, electrical transformers, capacitors, switches, circuit breakers, other miscellaneous items and debris (rags, gaskets, and personal protective equipment). PCB concentrations of the waste include amounts in all regulatory concentrations (i.e., 50 parts per million (ppm), 50–499 ppm, and >500 ppm); however, 88% of the waste is at concentrations below 50 ppm PCB and less than 5% of the total shipment is liquid PCBs greater than 50 ppm. Details of the particular amounts and concentrations DLA petitioned to import are provided in Refs. 4 and 5.

DLA will package and transport, treat and dispose of this PCB waste in the same manner as waste identified in its previous petitions (Ref. 2), which EPA granted in 2003 to allow the import of over 4,000,000 pounds of waste contaminated with PCBs; DLA notes that compliance is required with the International Maritime Dangerous Goods Code/International Maritime Organization, the International Civil Aviation Organization Technical Instructions, the International Air Transport Association Dangerous Goods Code, the United Nations Recommendations on the Transport of Dangerous Goods Code, and 49 CFR parts 100–199. DLA further notes that proper handling and shipping will include blocking, bracing, over packing, and inclusion of spill containment devices, as required by applicable transportation regulations.

DLA states that it will handle and dispose of all PCBs in conformance with the PCB regulations at 40 CFR part 761. DLA notes that it has ''considerable experience and expertise in awarding and administering disposal contracts for PCB waste in the U.S.'' and that it will only ''award contracts for treatment and disposal services with commercial firms. Contracts will be awarded in accordance with all applicable federal procurement statutes and the Federal Acquisition Regulations (FAR).'' On October 12, 2005, DLA selected Clean Harbors Environmental Services (CHES) in Coffeyville, Kansas to dispose of the PCB waste to be removed from Japan. CHES has disposed of PCBs returning from Japan at the Coffeyville Disposal Facility on four separate occasions since 2003 without incident. In addition, DLA will use shippers approved by the United States Department of Transportation (DOT) when the waste materials are transported from the California port to the Coffeyville Disposal Facility. The surface commercial transport trucks and the sea vessels themselves are approved and contracted for use by the DOD Surface Deployment and Distribution Command.

1. *Information regarding no unreasonable risk provided by the petitioner*. DLA notes that the materials in question will be managed in accordance with all applicable laws and regulations. Once in the United States, the PCB waste will be transported, handled, treated, and disposed of in compliance with the PCB regulations at 40 CFR part 761. DLA states that it will only contract with companies with the required Federal and State-permitted storage, treatment, and disposal facilities for dealing with PCBs and PCB items. DLA notes that it and its contractors ''have extensive experience in safely returning U.S.-manufactured PCBs and PCB items to the U.S. for disposal,'' and that ''prior to safely returning and disposing of 2.7 million pounds of foreign-generated PCB containing waste under the previously granted exemption, DLA returned 2.4 million pounds of U.S.-manufactured PCBs and PCB Items from Japan since 1991 for compliant disposal without incident.''

In contrast, DLA notes that the continued storage of PCBs at U.S. facilities in Japan is problematic. DOD currently has a considerable amount of PCB waste in storage at its facilities in Japan, and more will accumulate over the coming years as equipment is retired from use and contaminated sites are cleaned up. DLA notes that due to the unavailability of disposal capacity in Japan, much of DLA's foreign-manufactured PCB waste inventory in Japan has been in storage for years and movement of PCB waste presently in storage is frequently necessary to accommodate additional PCBs taken out of service. DLA summarizes the risks of this situation as follows:

Continued accumulation over extended time periods increases the risk of exposure to U.S. military personnel, to people living in and around the U.S. installations where the PCBs are stored, and to the environment should releases occur due to human error, or unforeseen severe weather, or seismic events. In addition, storage containers will deteriorate with time, increasing the likelihood that personnel who must monitor such items and repack them if they suspect leakage are exposed to the PCBs. Long-term storage may increase the DOD's liability for cleanup costs if spills occur. This would increase exposure to U.S. personnel and local citizens and could potentially result in ground and water contamination. Each time an item is handled, another opportunity for a spill or exposure is created. The storage situation is exacerbated in Japan because the installations where these materials are located are relatively small, storage space is at a premium, and the surrounding civilian communities are located in very close proximity to the stored PCBs. Moreover, the situation for the DOD is further complicated because of the perceptions of the local communities regarding PCBs.

DLA further notes that EPA expressed concerns about long-term storage in the PCB Import for Disposal Rule (Ref. 6):

EPA believes that PCB wastes which are not disposed of for extended periods of time or which are not disposed of in facilities providing equivalent protection from release to the environment may pose an unreasonable risk of injury to health and the environment. (61 FR 11096)

The same rule also underscored the benefit of prompt disposal in the United States (Ref. 6):

Based on the persistence of PCBs in the global environment and EPA's finding that any exposure to human beings or the environment may be significant, EPA believes that the safe disposal of PCBs in approved U.S. facilities poses less risk of injury to health or the environment in the United States than the continued presence of PCBs in other countries, since proper disposal in this country provides protection against possible hazards from improper disposal elsewhere. (61 FR 11096)

Beyond the immediate environmental risk, DLA describes other benefits to the United States that it believes would result from the granting of its petition:

In 1968, a tragic human poisoning episode in Western Japan affected over 1,000 people causing 22 deaths. The ''Yusho'' or ''rice oil disease'' was attributed to the consumption of rice bran oil contaminated with PCBs and served as a catalyst for current PCB prohibitions such as those imposed by TSCA, the Stockholm Convention, and Japanese domestic law. As a result of this highly publicized incident, Japanese citizens exhibit particular sensitivity to PCB issues. Delicate U.S.-Japan relations over the presence and operation of U.S. military installations could be adversely affected by denial of this petition.

The presence of PCBs on U.S. military bases in Japan has in the past attracted significant adverse attention from Japanese politicians, the Japanese press, Japanese environmental groups, and local citizens. There has been constant local surveillance of U.S. military PCB storage in Sagamihara and demands for inspections and sampling for PCBs since at least 1992, when a member of Congress released a report outlining the storage and presence of PCBs and other hazardous materials on U.S. bases in Japan. Any perception that the United States would return to stockpiling and long term storage of these materials invites unwarranted claims that the U.S. military is neglecting its environmental responsibilities.

DLA concludes:

Allowing PCB material to remain in storage indefinitely may lead to degradation of storage containers and releases of PCBs into the environment from the materials located at temporary or permanent storage facilities. PCBs released into the environment as a result of disasters, accidents, container degradation or other events can present significant exposure risks. This material is currently stored, or will need to be stored, on crowded DOD facilities in close proximity to where U.S. military and civilian personnel and the local community live and work. Since there are no permitted PCB disposal facilities available to U.S. forces in Japan, and because of the unique environmental conditions in Japan, as noted above, the potential for PCB contamination via leaks from aging containers or accidental spills is higher at these locations than at EPA-permitted disposal facilities in the DOD civilian employees, U.S. military personnel, and contractors employed by the U.S. Government are at greatest risk.

2. *Information regarding good faith efforts provided by the petitioner*. DLA argues in its petition that disposal of its PCBs in Japan is not an available disposal option:

As DLA noted in its previous exemption requests, there are significant impediments to disposal on DOD military installations in Japan. To be properly processed, PCB materials should be separated into three streams: 1) metallic components to be decontaminated and recycled; 2) used oils to be treated/dechlorinated and recycled or burned for energy recovery; and 3) non-recyclable material to be treated and disposed of as residual solid wastes. Although certain portable treatment technologies are becoming available in Japan, the domestic regulatory standards are very stringent and would require PCB decontamination levels to be less than 0.5 ppm without dilution to qualify an item as being non PCB. Complicating the situation further is that any transfer or sale of property from the U.S. military installations into Japanese commerce is considered an ''import'' of property. Japan has banned the importation of PCBs at any detectable concentration including concentrations below the very stringent 0.5 ppm level at which Japan regulates domestic PCBs. DLA is not aware of any available technologies that are permitted in Japan that would treat all PCBs items to the level that PCBs are completely removed or that could be acquired at a cost that is economically feasible. Moreover, if such technology were to become available, it would not resolve the issue of the residual ''non-recyclable'' waste that would remain or result from the treatment process. There are no permitted commercial disposal facilities currently available to the U.S. military for PCB disposal in Japan; hence, treatment outside of Japan would still be required for the residual wastes resulting from any ''on-installation'' treatment process.

DLA further argues that disposal of this waste in another country is not a viable option. DLA cites its 1999 Report to Congress as background on the difficulty it faces in finding suitable disposal alternatives for PCB waste generated by DOD overseas. In particular, DLA discusses the difficulty of shipping waste from Japan to other countries posed by the Basel Convention:

Prior to submitting its previous request to EPA for an exemption from the TSCA PCB import ban, DLA and its primary disposal contractor made contacts over a period of several years with Japanese officials and with disposal facilities located outside the U.S. in an effort to identify firms that could dispose of waste PCB items overseas while satisfying Basel Convention requirements. The DOD also consulted with State Department officials in Japan and the U. S. whose responsibilities included international environmental matters. These consultations resulted in a consensus that use of existing facilities in other developed countries was not a reasonable alternative. Even if other countries would accept these wastes, non-governmental organizations could be expected to oppose disposal of its U.S. waste in third countries, principally because the U. S. already has the technical capability to dispose of PCBs.

DLA concludes that it has made every reasonable effort to locate appropriate disposal sites outside the United States and that it has accordingly satisfied the good faith efforts criteria necessary for an exemption.

B. EPA's Final Decision on the Petition: July 21, 2005 Petition; EPA is Granting this Petition

1. *No unreasonable risk determination*. EPA finds generally that the disposal of imported PCB waste at an EPA-approved PCB disposal facility poses no unreasonable risks as these facilities have been approved on the basis of that standard. In addition, the risks to human health and the environment associated with long-term storage of this waste far outweigh the risks associated with the transportation of this waste from Japan to an approved disposal facility in the United States.

As with the previous petition, EPA concurs with DLA's assessment that transportation of this waste will pose no unreasonable risk if conducted in accordance with all applicable laws and regulations. EPA permits the domestic processing and distribution in commerce of PCBs and PCB items for disposal in compliance with 40 CFR part 761, and in issuance of the PCB Import for Disposal Rule EPA investigated and sought comment on the risks inherent in transportation of imported PCB waste, and determined those risks to be insignificant (Ref. 6). For the following reasons, EPA finds that there is no unreasonable risk from the transport of this waste to the United States for disposal:

i. PCBs are hazardous and pose a potential risk to health and the environment. Proper disposal would reduce PCB-associated risks.

ii. Risk results from a combination of exposure (likelihood, magnitude and duration) and the probability of effects occurring under the conditions of exposure. Because the probability of a transport accident occurring is low, the likelihood of exposure to PCBs is commensurately low. Consequently, the risk of adverse effects to human health or the environment is minimal.

iii. The PCB-containing materials will be packaged in a manner consistent with Federal, State, and local regulations addressing the storage and transport of hazardous materials. In addition, PCB waste will be continuously monitored during the water transport from Japan to the United States. Contingency plans are required by the International Maritime Dangerous Goods Code and DOT to be in place before and after the import of PCB-containing items to the United States. Moreover, the PCB items that will be transported to the United States are not combustible, which will make the probability of fires low. Together, these contingency measures will minimize exposure to humans and the environment in the event of an accident or emergency during ocean transport.

iv. Given the aforementioned information, the exposure likelihood, frequency, and duration are so low that even though PCBs are considered to be highly hazardous, risk (combined exposure and hazard) will not be unreasonable to human health or the environment.

v. The potential for human health risks are further mitigated by duration of exposure. PCBs are most hazardous following long-term (chronic) exposures. Under the transport scenario proposed, any exposures to humans (i.e., accidental or emergency situation) will be of very short duration. Hence, the low probability of exposure occurring combined with the short-term duration of exposure, should one occur, further supports a qualitative conclusion that there is no unreasonable risk to human health.

vi. The long-term concern is the potential for accumulation in the ecological environment. Under a worst case scenario where all of the PCBs were released due to an unforeseen and highly unlikely catastrophic event during transport, PCB-exposed biological receptors could be adversely affected. However, this scenario is highly unlikely because it would require a complete failure of all safeguards that will be in place. The DLA analyses indicate that there would be a low probability of a complete failure. The alternative of storing the PCBs indefinitely seems to pose more risk than transport. Further, should an accident occur, emergency response authorities at least within U.S. waters, would be invoked to mitigate and/or remediate exposures.

2. *Good faith efforts to find substitutes met*. Section 6(e)(3(B)(ii) of TSCA requires the Administrator to make an

additional finding, that ''good faith efforts have been made to develop a chemical substance that does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl.'' EPA has interpreted this provision to require that a petitioner has the burden of demonstration that it has made the requisite good faith efforts. (See 40 CFR 750.11.)

EPA believes that DLA has demonstrated good faith efforts to find alternatives to disposal of this PCB waste in the United States. EPA is aware of the lack of adequate PCB disposal capacity in Japan. DLA has explored exporting this waste to other countries as an alternative but since this is waste owned by the United States, the waste may not be shipped to other countries in the area because the United States is not a party to the Basel Convention and does not have bilateral agreements with countries in the area. EPA also acknowledges the peculiar circumstances of DOD's PCBs, which, while present in one country, are owned by another country's government, leading to significant difficulty in providing Basel Convention notification to third countries. Given these difficulties, EPA concurs with DLA's conclusion that disposal in a third country is not a viable alternative for this waste.

3 . *Benefits of granting the petition*—i. *Avoiding the risks of long-term storage*. EPA believes that granting the petition to import 1,328,482 pounds of waste contaminated with PCBs (88% is less than 50 ppm and less than 5% is liquid PCBs greater than 50 ppm) will benefit the United States and the environment in general in several ways. As DLA notes, the continued long-term storage of PCB waste on U.S. military facilities in Japan poses risks of exposure to U.S. personnel and the environment—risks that can be eliminated through the action finalized in the petition.

ii. *Ensuring proper and safe disposal*. Granting the petition allows the United States to accept responsibility for the toxic waste it generates by assuring proper and safe disposal in domestic permitted disposal facilities.

iii. *Ensuring the safety of Japanese citizens*. EPA considers the reduction of risk to Japanese citizens to be advantageous, especially in light of the heightened concerns over PCBs in that country and the sensitivities surrounding the U.S. military's presence in Japan. Granting the petition is the only practical mechanism to remove this waste from Japan. Otherwise the U.S. military is in the awkward position of explaining to its Japanese hosts that it cannot remove its own toxic waste from their country because U.S. law does not allow the waste to be sent to the United States.

For these reasons EPA finds DLA has satisfied the exemption criteria of TSCA section 6(e)(3)(B) and is granting the petition.

V. References

1. EPA, OPPT. Polychlorinated Biphenyls; Manufacturing (Import) Exemption. Proposed Rule. **Federal Register** (72 FR 21190, April 30, 2007) (FRL–8120–6). Available on-line at *http://www.epa.gov/fedrgstr*.

2. EPA, OPPT. Polychlorinated Biphenyls; Manufacturing (Import) Exemptions. Final Rule. OPPT–2002–0013. **Federal Register** (68 FR 4934, January 31, 2003) (FRL–7288–6). Available on-line at *http://www.epa.gov/fedrgstr*.

3. EPA, Office of Toxic Substances (OTS). Polychlorinated Biphenyls; Manufacturing, Processing, Distribution in Commerce Exemptions. Proposed Rule. OPTS–66008F. **Federal Register** (53 FR 32326, August 24, 1988).

4. DOD, DLA. Petition from Keith W. Lippert, Vice Admiral, SC, USN, Director to Stephen L. Johnson, Administrator, EPA. Subject: Petition to the Administrator, United Sates Environmental Protection Agency, For an Exemption Under the Toxic Substances Control Act to Import Polychlorinated Biphenyls (PCB) and PCB Items for Disposal. July 21, 2005. 13 pp. with attachments.

5. DOD, DLA. Electronic mail dated November 2, 2006 from Miriam Alonso, Hazardous Programs, to Tom Simons, National Program Chemicals Division, OPPT, EPA. Subject: Updated Petition Data for EPA for petition submitted July 21, 2005. 2 pp.

6. EPA, OPPT. Disposal of Polychlorinated Biphenyls; Import for Disposal. Final Rule. **Federal Register** (61 FR 11096, March 18, 1996) (FRL–5354–8). Available on-line at *http://www.epa.gov/fedrgstr*.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB), because this action is not likely to result in a rule that meets any of the criteria for a ''significant regulatory action'' provided in section 3(f) of the Executive Order.

B. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, 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 are listed in 40 CFR part 9 and 48 CFR chapter 15.

This final rule would not impose any new information collection burden. EPA is proposing to grant the petition by DLA to import PCBs for disposal. DLA is now subject to the existing EPA regulations regarding the disposal of PCBs in 40 CFR part 761. OMB has previously approved the information collection requirements contained in 40 CFR part 761 under the provisions of PRA, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control numbers 2070–0003 (EPA ICR No. 1000.06), 2070–0008 (EPA ICR No. 1001.06), 2070–0011 (EPA ICR No. 1012.06), 2070–0021 (EPA ICR No. 0857.07), 2070–0112 (EPA ICR No. 1446.06), and 2070–0159 (EPA ICR No. 1729.02). Copies of these ICR documents may be obtained by mail at the Office of Environmental Information, Collection Strategies Division (2822), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, by e-mail at *auby.susan@epa.gov* or by calling (202) 566–1672. Copies may also be downloaded from the Internet at *http://www.epa.gov/icr*. Include the ICR and/or OMB numbers in any correspondence.

As defined by PRA and 5 CFR 1230.3(b), ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business

Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, 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 will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small government jurisdictions.

For purposes of assessing the impacts of this final rule on small entities, small entity is defined as:

1. A small business that meets the Small Business Administration size standards codified at 13 CFR 121.201.

2. A small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000.

3. A small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the impacts of this final rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. EPA is granting this petition by DLA to import PCBs for disposal. Only DLA, which is not a small entity, is regulated by this final rule.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, (UMRA), Public Law 104–4, EPA has determined that this final 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. EPA is granting a petition by DLA to import PCBs for disposal. DLA is required to comply with the existing regulations on PCB disposal at 40 CFR part 761. The only mandate that is imposed by this final rule is imposed on DLA. In addition, EPA has determined that this final rule would not significantly or uniquely affect small governments. The DLA petition states that the PCBs will be disposed of in PCB-approved facilities. No new facilities, which could affect small government resources if a permit is required, are contemplated. EPA believes that the disposal of PCBs in previously approved facilities in the amounts specified in this final rule would have little, if any, impact on small governments. Thus, this final rule is not subject to the requirements of UMRA sections 202, 203, 204, or 205.

E. Executive Order 13132: Federalism

This action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999).

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

Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. EPA's final rule grants a petition from DLA to import PCBs and dispose of them in PCB-approved disposal facilities in accordance with existing regulations. EPA does not believe that this activity will have any impacts on the communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this final rule.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that:

1. Is determined to be ''economically significant'' as defined under Executive Order 12866.

2. Concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. EPA is granting the petition from DLA to import PCBs and dispose of them in approved PCB disposal facilities in accordance with existing regulations. EPA believes that the import and disposal of the amount of PCBs specified in the exemption petitions will present little, if any, additional risk to persons living in the vicinity of the approved disposal facilities or in the communities through which the PCBs may be transported.

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

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

I. The National Technology Transfer and Advancement Act

This action does not involve any technical standards; therefore, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 (15 U.S.C. 272 note), does not apply to this action.

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

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

K. Executive Order 12630: Governmental Actions and Interference with Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this final rule in accordance with the *Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings* issued under the Executive order.

L. Executive Order 12988: Civil Justice Reform

In issuing this final rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and 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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Lists of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: September 10, 2007.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

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

PART 761—[AMENDED]

■ 1. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

■ 2. Section 761.80 is amended by adding a new paragraph (j) to read as follows:

§ 761.80 Manufacturing, processing and distribution in commerce exemptions.

* * * * *

(j) The Administrator grants the United States Defense Logistics Agency's July 21, 2005 petition for an exemption for 1 year to import 1,328,482 pounds of PCBs and PCB items stored or in use in Japan as identified in its petition, as amended, for disposal.

* * * * *

[FR Doc. E7–18345 Filed 9–17–07; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 401

[USCG–2006–24414]

RIN 1625–AB05

Rates for Pilotage on the Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is finalizing the February 2007 interim rule, which updated rates for pilotage service on the Great Lakes by increasing rates an average of 22.62% across all three pilotage districts over the last ratemaking that was completed in April 2006. Annual reviews of pilotage rates are required by law to ensure that sufficient revenues are generated to cover the annual projected allowable expenses, target pilot compensation, and returns on investment of the pilot associations.

DATES: This final rule is effective October 18, 2007.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2006–24414 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this final rule, please call Mr. Michael Sakaio, Program Analyst, Office of Great Lakes Pilotage, Commandant (CG–3PWM), U.S. Coast Guard, at 202–372–1538, by fax 202–372–1929, or by email at *michael.sakaio@uscg.mil.* For questions on viewing or submitting material to the docket, call Renee V. Wright, Chief, Dockets, Department of Transportation, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

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I. Background

The Great Lakes Pilotage Act of 1960, codified in Title 46, Chapter 93, of the United States Code (U.S.C.), requires foreign-flag vessels and U.S.-flag vessels in foreign trade to use Federal Great Lakes registered pilots while transiting the St. Lawrence Seaway and the Great Lakes system. 46 U.S.C. 9302, 9308. The Coast Guard is responsible for administering this pilotage program, which includes setting rates for pilotage service. 46 U.S.C. 9303.

The Coast Guard pilotage regulations require annual reviews of pilotage rates and the creation of a new rate at least once every five years, or sooner, if annual reviews show a need. 46 CFR part 404. 46 U.S.C. 9303(f) requires these reviews and, where deemed appropriate, that adjustments be established by March 1 of every shipping season.

To assist in calculating pilotage rates, the three Great Lakes pilotage associations are required to submit to the Coast Guard annual financial statements prepared by certified public accounting firms. In addition, every fifth year, in connection with the full ratemaking, the Coast Guard contracts with an independent accounting firm to conduct audits of the accounts and records of the pilotage associations and to submit financial reports relevant to the ratemaking process. In those years when a full ratemaking is conducted, the Coast Guard generates the pilotage rates using Appendix A to 46 CFR Part 404. Between the five-year full ratemaking intervals, the Coast Guard annually reviews the pilotage rates using Appendix C to 46 CFR Part 404, and adjusts rates as appropriate.

The last full ratemaking was published in the **Federal Register** on April 3, 2006 (71 FR 16501). The first annual review following the 2006 ratemaking showed a need to adjust rates for the 2007 Great Lakes shipping season. That adjustment was the subject of a Notice of Proposed Rulemaking (''NPRM,'' 71 FR 39629, Jul. 13, 2006), followed by an Interim Rule (72 FR 8115, Feb. 23, 2007; corrected at 72 FR 13352, Mar. 21, 2007) which took effect March 26, 2007. In addition to the public comments, we received on the NPRM, we invited comments on the interim rule.

II. Discussion of Comments

The Coast Guard received three comments in response to the interim rule. One comment was received from the legal representative of the pilot associations; one comment was received from the legal representative for the Shipping Federation of Canada; and one comment was received from the Saint Lawrence Seaway Pilots Association.

A. *Comments Not Requiring Full Discussion.* Several comments raised issues that have either been fully addressed by the Coast Guard in the interim rule or in preceding rulemakings, or which are not relevant to the current rulemaking. These issues include the Coast Guard's pending action on Rear Admiral J. Timothy Riker's bridge hour standards report; whether delay and detention should be included in calculating bridge hours; the use of actual versus rounded bridge hours in projecting compensation; and whether the Coast Guard is correct in calculating pilot compensation by multiplying mates' wages by 150% and then adding benefits, as opposed to multiplying mates' wages and benefits by 150%. On this last point, one commenter took issue with our statement, in the interim rule, that in 2003 the District Court for the District of Columbia upheld our method of applying the 150% multiplier. This commenter remarked that a court ruling on this issue today might reach a different result in light of the ''quantitative proof'' that the Coast Guard's method is less successful than the commenter's preferred method in producing the outcome intended by Congress. We disagree. No such ''quantitative proof'' data has been submitted to the docket for this rulemaking. Moreover, despite this commenter's statements to the contrary, we have fully and consistently explained the rationale for our method, most recently in the interim rule at 72 FR 8117.

Finally, comments concerning surcharges are not relevant to this rulemaking inasmuch as no surcharges have been taken into consideration in establishing the current rate. In the 2006 ratemaking, we incorporated all surcharges that were determined reasonable and necessary for the provision of pilotage service into each pilot association's expense base, and terminated any further surcharges. No surcharges are currently authorized by the Coast Guard to be charged by the pilot associations and no future surcharges are contemplated. Persons interested in the Coast Guard's treatment of surcharges are referred to the 2006 ratemaking's final rule (71 FR 16501, Apr. 3, 2006).

B. Union Contracts. One of the comments stated that the Coast Guard should consider using other union contracts, besides the American Maritime Officers' (AMO) union contracts, in determining target pilot compensation. It mentioned two other maritime labor unions, the Marine Engineers' Beneficial Association (MEBA) and the National Organization of Masters, Mates, and Pilots of North America (MMP). The comment further stated that ''the Coast Guard has historically limited its review to AMO union contracts. However, the regulations require a review of all union contracts.''

We agree that the Coast Guard, since the implementation of the Great Lakes Ratemaking Methodology in 1996, has consistently used the AMO union contracts in its computation of target pilot compensation. We disagree that the regulations require a review of all union contracts. 46 CFR part 404, Appendix A, states only that ''the average annual compensation for first mates is determined based on the most current union contracts.'' The Coast Guard has interpreted this language to mean contracts most representative of first mates sailing on laker vessels in the Great Lakes. We disagree with the commenter that MEBA and MMP contracts should be included in our computation of rates. Research leading to the publication of the interim rule shows that AMO union contracts represent 62% of all laker tonnage compared to non-AMO union contracts, which represent approximately 38% of the tonnage. We do not know the exact percentage of laker tonnage represented by MEBA or MMP. But even with their presence, or any other union's presence, the majority of the tonnage (62%) is represented by the AMO union contracts.

Another commenter stated that the Coast Guard should use ''only the most lucrative union contract in calculating target pilot compensation.'' We disagree. As previously discussed, 46 CFR part 404, Appendix A, requires that the Coast Guard review ''the most current contracts'' in computing target pilot compensation and that is what we have done. Placing undue emphasis on a single ''most lucrative'' contract would inappropriately inflate compensation projections.

C. Magnitude of Rate Increase. One comment stated the Coast Guard, by raising ''pilotage rates 22.62% ... over the last rulemaking completed approximately one year ago, and just under 50% since 2005'' had, by that fact alone, ''breached its obligation to maintain a fair and efficient pilotage system and adhere to the statutory requirement to ensure that rates accurately reflect the costs of providing pilotage services under the Great Lakes Pilotage Act.'' The Coast Guard disagrees. 46 U.S.C. 9303(f) states that the ''Secretary shall prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.'' 46 CFR Part 404, Appendices A and C, set out two methodologies, which were themselves the product of public rulemaking, creating fair and impartial formulas for establishing those rates and charges for pilot services. The Coast Guard has meticulously adhered to these methodologies in the creation of the rates referred to by the commenter.

This same commenter states that by switching to unrounded bridge hour projections in the interim rule, vice the rounded bridge hour projections used in the NPRM, rates actually increased by 7.2%, overall, instead of the 3% claimed by the Coast Guard. We disagree. As we stated in the preamble to the interim rule, this correction increased the rate by 3%. The remaining percentage increases are attributable to a 14.7% increase in wages and benefits under the most recent AMO union contracts, a 5% increase in projected traffic, and .5% to non-wage inflation.

D. Petition for Full Review. One commenter petitioned the Coast Guard to perform a full review of pilotage rates, to include an independent audit of each pilot association's expense records and accounts pursuant to 46 CFR 404.1(b). That section requires that the Coast Guard perform such a review and audit at least once every five years. The last time the Coast Guard conducted such an audit was following the 2002 navigation season. Accordingly, the Coast Guard will, in the ordinary course, and consistent with the commenter's request, conduct a five year review and audit at the completion of the 2007 navigation season.

III. Discussion of the Final Rule

This final rule finalizes the interim rule's rates that Federal Great Lakes Registered Pilots may charge for the provision of pilotage services. Because this final rule changes none of the calculations or rates contained in the interim rule, we will not repeat the rate calculations or the regulatory evaluation contained in that document (72 IR 8115, Feb. 23, 2007).

IV. Regulatory Evaluation

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

The interim rule published in February 2007 is unchanged for this final rule. The cost and population data contained in the interim analysis is also unchanged for this final rule. In addition, there were no comments on the evaluation of the interim rule published in February 2007. Consequently, we adopt the analysis from the interim rule, available in the preamble of the interim rule, for this final rule. This rule makes final the 22.62 percent average rate adjustment for the Great Lakes system over the rate adjustment found in the 2006 final rule. The annual cost of the rate adjustment in this rule to shippers is approximately $2.3 million (non-discounted). The total five-year present value cost estimate (2007–2011) of this rule to shippers is $10.2 million discounted at a seven percent discount rate and $11.0 million discounted at a three percent discount rate. We use a five-year cost estimate because the Coast Guard is required to determine and, if necessary, perform a full adjustment of Great Lakes pilotage rates every five years.

A. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule has 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 analysis of the impact to small entities in the interim rule resulted in no small entities affected by this rule. Since we received no comments pertaining to small entities and the analysis has not changed, we adopt the interim analysis for this final rule. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule does not have a significant economic impact on a substantial number of U.S. small entities.

B. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Mike Sakaio, Office of Great Lakes Pilotage, (CG–3PWM–2), U.S. Coast Guard, telephone 202–372–1538, or send him e-mail at *Michael.Sakaio@uscg.mil.*

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).

C. Collection of Information

Under the Paperwork Reduction Act of 1995, (44 U.S.C. 3501–3520), the Office of Management and Budget (OMB) reviews each rule that contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, record keeping, notification, and other similar requirements.

This rule calls for no new collection of information under the Paperwork Reduction Act. This rule does not change the burden in the collection currently approved by the Office of Management and Budget under OMB Control Number 1625–0086, Great Lakes Pilotage Methodology.

D. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism because there are no similar State regulations, and the States do not have the authority to regulate and adjust rates for pilotage services in the Great Lakes system.

E. Unfunded Mandates Reform Act

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

F. Taking of Private Property

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

G. 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.

H. 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.

I. 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.

J. 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.

K. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

L. 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). There are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(a), of the Instruction, from further environmental documentation. Paragraph 34(a) pertains to minor regulatory changes that are editorial or procedural in nature. This rule adjusts rates in accordance with applicable statutory and regulatory mandates. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 401

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

■ For the reasons set forth in the preamble, the Coast Guard adopts as final without change the interim rule published at 72 FR 8115, February 23, 2007.

Dated: September 10, 2007.

J.G. Lantz,

Acting Assistant Commandant for Prevention, U.S. Coast Guard.

[FR Doc. E7–18306 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–15–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Parts 727, 742, and 752

RIN 0412–AA30

Miscellaneous Amendments to Acquisition Regulations (AIDAR Circular 2007–02)

AGENCY: U.S. Agency for International Development.

ACTION: Final Rule.

SUMMARY: This final rule amends the USAID acquisition regulation to add two new parts and four new sections in existing parts of the regulation, as more fully discussed in the Supplementary Information. USAID proposed these amendments in the proposed rule published on November 4, 1998, as AIDAR Notice 98–2.

DATES: *Effective Date:* October 18, 2007.

FOR FURTHER INFORMATION CONTACT: M/OAA/P, Ms. Diane M. Howard, Room 7.08–31, 1300 Pennsylvania Ave., NW., U.S. Agency for International Development, Washington, DC 20523–7801. Telephone (202) 712–0206; Internet: *dhoward@usaid.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

AIDAR Notice 98–2 (63 FR 59501, November 4, 1998) proposed four separate items to amend the USAID Acquisition Regulations (48 CFR Chapter 7), or AIDAR. The AIDAR is USAID's supplement to the Federal Acquisition Regulation (48 CFR Chapter 1), the FAR. The following summarizes each item and the final action USAID is taking for each.

1. Item A of AIDAR Notice 98–2 proposed a new Part 712, specifically section 712.101, ''Policy,'' to address a potential conflict between an existing AIDAR clause, (48 CFR) 752.7008 ''Use of Government Facilities or Personnel (APR 1984)'' and the policy stated in (48 CFR) FAR Part 12. The latter states that the government will follow customary commercial practice when acquiring commercial items. The AIDAR clause prohibits the use of Government facilities or personnel in the performance of the contract. The AIDAR clause does not recognize situations in which the customary commercial practice may be for the purchaser to provide facilities or personnel to the vendor. At the time we proposed this new part, we considered the possibility that USAID may provide Government facilities, such as office space and equipment, to contractor employees providing commercial services such as IT support or secretarial/clerical services in USAID facilities. If commercial clients typically provide facilities and equipment for vendors providing similar services in the private sector, then that customary commercial practice would be inconsistent with the policy stated in (48 CFR) AIDAR 752.7008. The proposed part 712 would have required the contracting officer to comply with customary commercial practice unless he or she obtains a waiver in accordance with (48 CFR) FAR 12.302. However, the Agency received no comments on this proposed rule and we have no indication that if providing facilities and equipment is a common commercial practice, it has ever been a problem in a USAID commercial contract. Therefore, we are withdrawing the proposed new part.

2. Item B of the Notice proposed removing (48 CFR) Chapter 7 (AIDAR) Appendix I, ''USAID's Academic Publication Policy'' and adding a new part 727 and subpart 727.4 ''Rights in Data and Copyrights.'' The intent of this item of the proposed rule was to address four issues: (1) To make the clause at (48 CFR) FAR 52.227–14, ''Rights in Data—General'' apply to USAID's contracts performed overseas and awarded to U.S. organizations, (2) to provide an alternate paragraph to add to this FAR clause to reserve USAID's right to restrict release of data when release may have a negative impact on the Government's development or diplomatic relationship with the cooperating country, (3) to provide guidance on Rights in Data coverage for overseas contracts with non-U.S. entities, and (4) to incorporate some of the policies and procedures in Appendix I that would be removed with the Appendix but that should be retained, as being in the Agency's best interests.

We are withdrawing the parts of Item B that affected Appendix I and retaining the current (48 CFR) Chapter 7, Appendix I in its present form. USAID is developing a separate internal policy and regulation on intellectual property. If this policy and regulation affects USAID contracts, we will determine how the AIDAR should implement it and take the appropriate action at that time.

We are, however, finalizing other sections of the proposed (48 CFR) subpart 727.4, but we are amending the language from what appeared in the proposed rule. The only commenter on the proposed rule pointed out several instances where the wording was unclear about the intent of the proposed revision, so we have clarified the wording to address this comment.

We are finalizing the new subpart to address certain FAR requirements that must be met in order for USAID to place limits on release of data under our contracts, as originally explained in the Supplementary Information in the proposed rule.

First, 48 CFR (FAR) § 27.404(g)(3) states, ''* * * agencies may, to the extent provided in their FAR supplements, place limitations or restrictions on the contractor's right to use, release to others, reproduce, distribute, or publish any data first produced in the performance of the contract, including a requirement to assign copyright to the Government or another party, either by adding a paragraph (d)(3) to the Rights in Data—General clause at 52.227–14, or by express limitations or restrictions in the contract.'' Pursuant to (48 CFR) 27.404(g)(3), the final rule also includes new language, at (48 CFR) 727.404(g) and (48 CFR) 752.227–14(d)(3), under which USAID asserts the right to require contractors to assign copyright to the Government or another party. USAID contracting officers will only assert such a right in accordance with the principles as stated in (48 CFR) 27.402.

Second, the prescription for the FAR Rights in Data—General clause (48 CFR 52.227–14) does not require its use in contracts ''to be performed outside the United States, its possessions, and Puerto Rico, in which cases agencies may prescribe different clauses (see paragraph (n) of this section.'' 48 CFR 27.409(a)(1)(ii). Paragraph (n) states, ''Agencies may prescribe in their procedures, as appropriate, a clause consistent with the policy of 27.402 in contracts to be performed outside the United States, its possessions, and Puerto Rico.'' 48 CFR 27.409(n). Most USAID contracts are, in fact, performed overseas. USAID's FAR supplement, the AIDAR, does not address either of these requirements.

The proposed rule's new subpart, (48 CFR) 727.4, was intended to address these deficiencies in the AIDAR. The commenter pointed out that the wording of the proposed (48 CFR) 727.409(a) appeared to restrict USAID contracting officers to using only (48 CFR) FAR 52.227–14, even if another clause, such as (48 CFR) FAR 52.227–17 ''Rights in Data—Special Works,'' may apply. Since the proposed rule's intent was not to impose this kind of limitation, § 727.409 in the final rule more clearly states that contracting officers are to use whichever FAR ''Rights in Data'' clause best applies.

The prescriptions in the proposed rule also made distinctions between U.S. entities and non-U.S. entities, in that the proposed rule authorized contracting officers to adapt the FAR clause as necessary in contracts with the latter and performed overseas, to comply with applicable laws in the country of performance. The final rule removes any distinctions between U.S. entities and non-U.S. entities, and applies the FAR prescriptions to all contracts. The final rule constitutes Agency procedures pursuant to (48 CFR) FAR 27.409(n).

When the contracting officer incorporates (48 CFR) FAR 52.227–14, and if release, reproduction, distribution, or publication of data first produced or specifically used by the contractor may be sensitive to U.S. Government relations with the cooperating country, the new subpart also prescribes an AIDAR clause contracting officers must use. This new clause, at (48 CFR) 752.227–14, replaces the FAR clause's paragraph (d) and requires contracting officer approval before the contractor may release or reproduce such data.

3. Item C proposed a new section (48 CFR) 742.1170, ''Performance monitoring and progress reporting'' and clause at (48 CFR) 752.242–70, entitled ''Periodic Progress Reports.'' As explained in the supplementary information in the proposed rule, the purpose of the proposed sections was to provide USAID cognizant technical officers (CTOs) with a means to tailor contractors' progress reporting requirements so that the CTOs can best ensure that contractors are performing in accordance with the contract's requirements and achieving planned results. These AIDAR sections supplement (48 CFR) FAR Subpart 42.11 and internal Agency policies and procedures for monitoring the results of our implementing partners.

The Agency implemented these new sections after approving a class deviation to the AIDAR, through issuance of an internal directive, a Contract Information Bulletin (CIB) 98–21, ''Contractor Progress Reports—New AIDAR Coverage,'' on August 12, 1998. Since then, we have identified some areas where the language can be improved for clarity. We also received several comments on this item of the proposed rule, so this final rule includes a few non-substantive wording changes from the proposed rule.

One non-substantive comment asked that we ensure that the language in § 742.1170 and the clause at § 752.242–70 are consistent with each other and that the clause itself clearly states the Government's rights. Another commenter pointed out that in § 742.1170–4(b), the cognizant technical officer must advise the contracting officer of any ''required'' action, and recommended changing ''required'' to ''recommended'' to be consistent with the next sentence. We agree with this recommendation. The same commenter went on to point out that in the same section, the cognizant technical officer must provide recommendations to the contracting officer in sufficient time for the contracting officer to take necessary action, but the regulation doesn't include a definition of what is a reasonable timeframe, and recommended that we add a definition. We are including additional language to establish a typical (but non-binding) timeframe. In the same sentence, we also changed ''necessary'' to ''appropriate'' to more accurately reflect the nature of the kinds of recommendations that are likely to result from this report (the last sentence of this section makes clear that the contractor must comply with other notification requirements in the contract).

Finally, the same commenter recommended adding language to paragraph (b) in the new clause at § 752.242–70 to make clear that any withholding due to contractor delay in furnishing a progress report also ends when the contractor submits the report. We accept this recommendation.

Because none of these changes are substantive, we are finalizing the rule with minor editorial changes reflecting the above comments, as well as other minor changes from passive to active voice and for clarity.

4. Item D proposed revisions to (48 CFR) § 752.232–7, ''Payments under Time-and-Materials and Labor-Hour Contracts.'' The current version of this AIDAR clause is a preamble to the FAR clause of the same name, at (48 CFR) § 52.232–7. We proposed to revise the AIDAR section to (a) clarify certain terms used in the FAR clause and (b) revise the clause to allow for a different withholding methodology than the FAR clause at the time allowed. Task orders were and continue to be issued by USAID contracting officers around the world and are paid by paying offices also located around the world. Because the Agency's financial management and contracting systems at that time were not able to easily support the coordinated tracking of cumulative withholdings per contract among several task order contracting officers and their respective paying offices, we determined that a new withholding methodology was in the Agency's best interests. The new methodology proposed limited the withholding to one percent per task order up to a maximum of $50,000 per task order, but with no limit for the basic contract. We received no comments about this proposed revision during the comment period, but we have received comments about the ambiguity of the existing AIDAR clause, both before and after we published the proposed rule.

The corresponding section of the FAR, (48 CFR) 52.232–7 was revised in August 2005 (Federal Acquisition Circular 2005–05, 70 FR 43580, Item III ''Payment Withholding''). After considering the discussion in the supplementary information for this Item of FAC 2005–05, we concluded that the need for withholding per task order is no longer necessary. Any withholding should be the exception, not the rule, and done only when the contracting officer must take this step to protect the Government's interests. Also, the Agency has a worldwide financial management system and is in the process of acquiring a new contracting system, and these systems are better able to track withholding at the contract level, regardless of where task orders are issued or paid. For these reasons, we determined this item in the proposed rule to be unnecessary.

Further, we now consider the existing AIDAR section to be unnecessary as a supplementary preamble to the FAR clause, since the prescription for the FAR clause addresses how USAID has traditionally used this clause for payments under time-and-material and labor-hour contracts. We are therefore removing the existing AIDAR clause through this final rule.

B. Regulatory Planning and Review

This is not a significant regulatory action and, therefore, is subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

The U.S. Agency for International Development certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any costs on either small or large businesses; therefore, an Initial Regulatory Flexibility Analysis has not been performed. This final rule revises (48 CFR) AIDAR parts 712, 727, 742, and 752 to require contracting officers to comply with customary commercial practice or to obtain a waiver pursuant to (48 CFR) FAR Part 12 in order to prohibit contractors from using government facilities or personnel in a commercial services contract; allows contracting officers to require contractors to obtain contracting officer approval before releasing or publishing data first produced in the performance of the contract, if the release or publication may have a negative effect on the Government's development objectives or diplomatic relationship with the cooperating country; and to specify progress reporting requirements in contracts.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the AIDAR do not impose any additional information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* AIDAR Subpart 742 and the clause at § 752.242–70 supplement the progress reporting requirements already included in (48 CFR) FAR Subpart 42.11 and are consistent with any information collection requirements in the FAR.

List of Subjects, in 48 CFR Parts 727, 742, and 752.

Government procurement.

■ For the reasons set forth in the Preamble, 48 CFR Chapter 7 is amended as set forth below.

■ 1. Add part 727 to subchapter E to read as follows:

PART 727—PATENTS, DATA, AND COPYRIGHTS

Subpart 727.4—Rights in Data and Copyrights

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 727.4—Rights in Data and Copyrights

727.404 Basic Rights in Data Clause.

(a) through (f) [Reserved]

(g) When the contract includes a requirement for the contractor to assign copyright to the government or another party, the contracting officer shall incorporate (48 CFR) 752.227–14 and/or include an express limitation or restriction in the contract. USAID contracting officers will assert such a right in limited circumstances in accordance with the principles as stated in (48 CFR) 27.402.

727.409 Solicitation provisions and contract clauses.

(a) When the contracting officer incorporates (48 CFR) FAR 52.227–14, and if the release or publication of data first produced in the performance of the contract may be sensitive to U.S. Government relations with the cooperating country, the contracting officer must use the clause at (48 CFR) 752.227–14.

(b) through (m) [Reserved]

(n) The prescriptions for provisions and clauses in (48 CFR) FAR 27.409 apply to all USAID contracts regardless of place of performance.

PART 742—CONTRACT ADMINISTRATION

■ 2. The authority citation for part 742 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

■ 3. Add subpart 742.11 to read as follows:

Subpart 742.11—Production, Surveillance, and Reporting

Subpart 742.11—Production, Surveillance, and Reporting

742.1170 Performance monitoring and progress reporting.

742.1170–1 General.

Performance monitoring is a function of contract administration used to determine contractor progress towards achieving the goals and objectives of the contract and to identify any factors that may delay or prevent the accomplishment of those goals and objectives. Performance monitoring requires USAID personnel, particularly the cognizant technical officer, to maintain adequate knowledge of the contractor's activities and progress in order to ensure that USAID's objectives, as stated in the contract's Statement of Work, will be achieved.

742.1170–2 Applicability.

(a) This section applies to USAID non-personal, professional/technical services contracts exceeding the simplified acquisition threshold, but may be applied to other USAID contracts, if the contracting officer and requiring office determine that doing so is in the best interests of the Agency. The contracting officer must ensure that this determination is documented in the contract file. This section does not apply to personal services contracts.

(b) The underlying principles of FAR 48 CFR subpart 42.11 apply to USAID contracts and are inherent to this section. However, not all of the specific requirements and terminology in FAR 48 CFR subpart 42.11 are compatible with the types of technical assistance contracts usually awarded by USAID.

Therefore, this section 742.1170 applies when the requirements of FAR 48 CFR subpart 42.11 do not meet USAID requirements or are otherwise not appropriate.

(c) The progress reports discussed in this section are separate from the performance evaluation reports prepared in accordance with FAR 48 CFR subpart 42.15 and internal Agency procedures, although they may be used by USAID personnel or their authorized representatives when evaluating the contractor's performance. Furthermore, the policies, procedures, and limitations of this section do not apply to technical reports, studies, papers, etc., the acquisition of which may be part of or even the sole purpose of the contract.

742.1170–3 Policy.

(a) The contractor is responsible for timely contract performance. Performance monitoring by USAID does not obviate this responsibility.

(b) The requiring office, particularly the cognizant technical officer and the contracting officer, will determine how to monitor the contractor's performance to protect the Government's interests, by considering:

(1) The contract requirements for reporting progress;

(2) The contract performance schedule;

(3) The contractor's implementation plan or workplan;

(4) The contractor's history of contract performance;

(5) The contractor's experience with the services or supplies being provided under the contract;

(6) The contractor's financial capability;

(7) Any other factors the requiring office, particularly the cognizant technical officer and the contracting officer, considers appropriate and necessary to adequately monitor contractor performance (for example, the day-to-day working proximity of the cognizant technical officer or contracting officer to the contractor's place of performance).

(c) In monitoring contractor performance, the requiring office (particularly the cognizant technical officer and contracting officer) must utilize any of the contractor's existing systems or processes for monitoring progress, provided that doing so is not contrary to the terms of the contract. The requiring officer or cognizant technical officer must not require anything from the contractor that is outside the scope or terms of the contract or may result in claims of waivers, of changes, or of other contract modifications. Further, progress reports shall not require information already available from other sources.

742.1170–4 Progress reporting requirements and contract clause.

(a) When the requiring office needs information on contract performance status on a regular basis, the contracting officer may require the contractor to submit periodic progress reports, tailored to address specific contract requirements but limited to only that information essential to USAID's needs in monitoring the contractor's progress.

(b) Because the cognizant technical officer is the individual most familiar with the contractor's performance, the contractor must submit the progress reports directly to the cognizant technical officer. The cognizant technical officer must review the reports and advise the contracting officer, in writing, of any recommended action, including any action needed to address potential or actual delays in performance. The cognizant technical officer must so advise the contracting officer in sufficient time, typically thirty days, for him or her to take any action that the contracting officer determines is appropriate. The requirements of this paragraph do not relieve the contractor of notification requirements identified elsewhere in the contract.

(c) The contracting officer must insert the clause at 752.242–70, Periodic Progress Reports, in solicitations and contracts that require progress reporting, as specified in this section. The contracting officer must include specific reporting instructions in the Schedule.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. The authority citation for Part 752 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

■ 5. Add section 752.227–14 to read as follows:

752.227–14 Rights in Data—General.

As prescribed in 727.409(b), insert the following clause:

Rights in Data—

General (OCT 2007)

The following paragraph (d) replaces paragraph (d) of (48 CFR) FAR 52.227–14 Rights in Data—General.

(d) Release, publication and use of data.

(1) For all data first produced or specifically used by the Contractor in the performance of this contract in the United States, its territories, or Puerto Rico, the Contractor shall have the right to use, release to others, reproduce, distribute, or publish such data, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract [see paragraph (d)(3) for limitations on contracts performed outside of the US].

(2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(3) For all data first produced or specifically used by the Contractor in the overseas performance of this contract, the Contractor shall not release, reproduce, distribute, or publish such data without the written permission of the Contracting Officer. The government also may require the contractor to assign copyright to the government or another party as circumstances warrant or as specifically stated elsewhere in the contract.

752.232–7 [Removed]

■ 6. Remove section 752.232–7.

■ 7. Add section 752.242–70 to read as follows:

752.242–70 Periodic progress reports.

As prescribed in 742.1170–3(c), insert the following clause in contracts for which periodic progress reports are required from the contractor. The term ''contract'' shall be interpreted as ''task order'' or ''delivery order'' when this clause is used in an indefinite-delivery contract.

Periodic Progress Reports (OCT 2007)

(a) The contractor shall prepare and submit progress reports as specified in the contract schedule. These reports are separate from the interim and final performance evaluation reports prepared by USAID in accordance with FAR 42.15 and internal Agency procedures, but they may be used by USAID personnel or their authorized representatives when evaluating the contractor's performance.

(b) During any delay in furnishing a progress report required under this contract, the contracting officer may withhold from payment an amount not to exceed US$25,000 (or local currency equivalent) or 5 percent of the amount of this contract, whichever is less, until such time as the contractor submits the report or the contracting officer determines that the delay no longer has a detrimental effect on the

Government's ability to monitor the contractor's progress.

Lynn Kopala,

Acting Procurement Executive.

[FR Doc. E7–18234 Filed 9–17–07; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No.070830493–7496–01; I.D. 082806B]

RIN 0648–AV95

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Correction

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

ACTION: Final rule; correction.

SUMMARY: NMFS announces corrections to Federal regulations for the West Coast groundfish fishery. This action corrects the latitude/longitude coordinates for the Salmon Troll and South Coast Recreational Yelloweye Rockfish Conservation Areas (RCAs) so that they are published in the proper sequence. This action correctly announces the 2007 tribal allocation amount of Pacific whiting. This action clarifies the application of the Ocean Salmon Conservation Zone in the Pacific whiting fishery. This action corrects some coordinates of the depth contour line approximations that are used to define the RCAs. This action is intended to eliminate any confusion for the public that may have occurred as a result of prior incorrect NMFS publications.

DATES: Effective September 18, 2007. Comments on this rule will be accepted through October 18, 2007.

ADDRESSES: You may submit comments, identified by 0648–AV95 by any of the following methods:

- E-mail: *Correction.nwr@noaa.gov*. Include 0648–AV95 in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: 206–526–6736, Attn: Gretchen Arentzen
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Gretchen Arentzen.

FOR FURTHER INFORMATION CONTACT: Gretchen Arentzen (Northwest Region, NMFS), phone: 206–526–6147; fax: 206–526–6736 and; e-mail: *gretchen.arentzen@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule also is accessible via the Internet at the Office of the Federal Register's website at *http://www.gpoaccess.gov/fr/index.html*. Background information and documents are available at the website of the Pacific Fishery Management Council (Council) at *http://www.pcouncil.org*.

Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subpart G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS. On September 29, 2006, NMFS published a proposed rule (71 FR 57764) to implement Amendment 16–4 to the Pacific Coast Groundfish FMP and to establish the 2007–2008 harvest specifications and management measures for groundfish taken in the EEZ off the coasts of Washington, Oregon, and California. NMFS accepted public comment on the proposed rule and responded to these comments in the preamble to the final rule, which published in the **Federal Register** on December 29, 2006 (71 FR 78638).

The 2007–2008 groundfish harvest specifications and management measures added a new potential closed area, the Ocean Salmon Conservation Zone (OSCZ), in the whiting fishery that could be implemented inseason through automatic action. Regulations at § 660.373(c)(3) define the OSCZ as a closed area applying to the whiting fishery; however, it does not state in this part that the OSCZ is closed only through automatic action when NMFS projects the whiting fishery may take in excess of 11,000 Chinook salmon within a calendar year. The process for implementation of this closed area is properly described in § 660.370(d). A cross-reference to this automatic action section is added to the whiting regulations defining the OSCZ to clarify that the OSCZ is only closed after NMFS initiates an automatic management action to implement this closed area based on the projected take of Chinook salmon.

A range of Pacific whiting (whiting) harvest specifications and management measures was adopted in the 2007–2008 harvest specifications and management measures for groundfish, and final 2007 specifications and management measures for whiting were adopted in March 2007. NMFS published a final rule establishing the 2007 whiting harvest specifications and management measures on April 18, 2007 (72 FR 19390), which included the level of the acceptable biological catch (ABC), optimum yield (OY), tribal allocation, and allocations for the nontribal commercial whiting sectors. The final 2007 tribal allocation was set according to an abundance-based sliding scale method, where the tribal allocation varies with the U.S. whiting optimum yield (OY) ranging from 14 percent (or less) of the U.S. OY when OY levels are above 250,000 mt, to 17.5 percent of the U.S. OY when the OY level is at or below 145,000 mt. NMFS had explained this method in the preamble to the proposed rule for the 2007–2008 groundfish harvest specifications and management measures. The tribal allocation was correctly expressed in the preamble to that final rule as 32,500 mt, however NMFS did not publish that amount in § 660.385(e), leaving the outdated 2006 tribal whiting allocation of 35,000 mt in current regulations. This rule corrects 660.385(e) by inserting the 2007 tribal allocation.

The preambles to the proposed and final rules for the 2007–2008 groundfish harvest specifications and management measures described the Yelloweye Rockfish Conservation Areas (YRCAs), closed areas intended to protect overfished species; however, the regulatory text published the latitude and longitude coordinates defining the Salmon Troll YRCA and the South Coast Recreational YRCA in the incorrect sequence, resulting in closed areas that are not the same size or shape as those analyzed by NMFS, recommended by the Council, and discussed in the preamble to the final rule. This correction re-publishes the YRCA latitude and longitude coordinates in the correct sequence to form the closed areas intended to protect yelloweye rockfish.

The 2007–2008 groundfish harvest specifications and management measures added a new Rockfish Conservation Area (RCA) boundary line approximating the 180–fm (32–m) depth contour off California with modifications to allow fishing for petrale sole. After publication of the proposed rule, the state of California requested adjustments to the latitude and longitude coordinates defining the petrale-modified 180–fm (329–m) boundary line to eliminate cross-overs with other neighboring boundary lines and to be consistent with boundaries of groundfish essential fish habitat closed areas off California. However, these changes from the proposed rule were not made and the original incorrect coordinates were published in the final rule for the 2007–2008 groundfish harvest specifications and management measures. This correction publishes the latitude and longitude coordinates defining the petrale-modified 180–fm (329–m) boundary line at § 660.394(f) that the state of California proposed and the Council recommended.

The 2007–2008 groundfish harvest specifications and management measures revised coordinates defining the RCA boundary line approximating the petrale-modified 250–fm (457–m) depth contour to eliminate cross-overs with neighboring RCA boundary lines. Coordinates defining this RCA boundary line, published at § 660.394(r), contained errors off the Washington coast and were published with these errors in both the proposed and final rule. The errors in the coordinates defining the RCA boundary line were introduced when transferring the latitude and longitude coordinates into the format necessary for publication in the **Federal Register** and eliminated a portion of petrale sole fishing grounds and opened an area of known rockfish abundance. This correction publishes the latitude and longitude coordinates defining the petrale-modified 250–fm (457–m) boundary line at § 660.394(r) that the state of Washington proposed and the Council recommended.

Classification

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B); providing prior notice and opportunity for comment would be unnecessary and contrary to the public interest.

This correction document revises § 660.373(c)(3) of the CFR so that the description of the OSCZ is consistent with the automatic action regulations, at § 660.370(d), for implementing the OSCZ. Allowing inconsistencies to remain in the **Federal Register** would be contrary to the public interest. It would leave language in the CFR that implies that a permanent closure is in place, even though the closure only exists if it is implemented through automatic management action. This automatic action will be taken when NMFS projects that the whiting fishery may take in excess of 11,000 Chinook salmon within a calendar year. The OSCZ was analyzed in the 2007–2008 groundfish specifications and management measures environmental impact statement, and is clearly described in the preambles to the proposed and final rules (71 FR 57764, 71 FR 78638) as a closure that NMFS can implement for the whiting fishery if Chinook salmon take is anticipated to exceed acceptable levels. Prior notice and opportunity for comment was provided earlier because both the EIS and the proposed rule were made available for public comment, and no comments were received pertaining to the application of the OSCZ. Also, this correction clarifies language at § 660.373(c)(3) to make it consistent with existing regulations at § 660.370(d) and does not change the intent, meaning, or application of the OSCZ closure. Leaving inconsistencies in the regulatory language is contrary to the public interest because it is confusing to the public and would leave language in the CFR that implies that a permanent closure is in place, even though the closure only exists if it is implemented through automatic management action; therefore, NOAA finds good cause to waive prior notice and opportunity for public comment.

This correction document revises § 660.385(e) of the CFR so that the 2007 tribal allocation of Pacific whiting is consistent with the allocation proposed by the tribal representative on the Council, recommended by the Council and that NMFS intended to implement. This correction implements an action that has already been made available for public review and comment in the preamble to the whiting ABC/OY final rule (71 FR 19390). By implementing the correct tribal allocation, NMFS is implementing the 2007 tribal whiting allocation determined by the methodology described in the preamble to the 2007–2008 harvest specifications and management measures proposed rule, and listed in the preamble to the whiting ABC/OY final rule, which was based on recommendations from the Makah tribe and the Council. The numerical allocation, however, was not changed in the regulatory text, so the 2006 tribal allocation is still listed in the CFR rather than the 2007 allocation. The interested public is aware of the current 2007 tribal whiting allocation. The Makah tribe is aware of the appropriate 2007 tribal whiting allocation and plans to stay within the 2007 allocation which they proposed; therefore, prior notice and opportunity for public comment is unnecessary.

This correction document revises § 660.390(c) and (d) of the CFR so that coordinates for the Salmon Troll and South Coast Recreational Yelloweye Rockfish Conservation Areas (YRCAs) are listed in the correct sequence to form rectangular closed areas. Each of these closed areas is defined by four coordinate points. If coordinates are connected in the sequence listed prior to this correction, they form bowtie shaped polygons that close approximately half of the area of the rectangular closed areas. When these points are connected in the correct sequence, they form rectangular closed areas, as illustrated in the EIS, described in the preamble to the final rule, recommended by the Council, and approved by NMFS for this action. A public notice and comment period was available for the EIS and final rule, and no comments were received pertaining to the proposed rectangular shape of the YRCAs. The YRCAs are designed to prevent the incidental catch of yelloweye rockfish, an overfished groundfish species that co-occurs with other, more abundant groundfish stocks. Allowing the YRCA coordinates to remain in § 660.390 in the incorrect sequence actually allows, rather than prevents, fishing in areas of yelloweye rockfish abundance, which is contrary to the public interest. The yelloweye OY is very low so that if even a small amount of excess incidental catch of yelloweye rockfish were to occur, all of the commercial and recreational hook-and-line groundfish fisheries north of Cape Mendocino, California, fisheries that take yelloweye incidentally, would have to be restricted or closed early to ensure that the 2007 yelloweye rockfish OY is not exceeded. Such restrictions and/or closures could be expected to ultimately result in significant revenue and job losses in coastal communities. By implementing these corrections as early as possible in the 2007 fishery, NMFS is implementing the YRCAs it had described in the preambles to the proposed and final rules for this action, based on recommendations from the Council. This correction is intended to ensure that yelloweye rockfish catch is kept within its allowable harvest levels, so that NMFS may meet its obligations under the Magnuson-Stevens Act to rebuild overfished stocks and to achieve the optimum yield from the fishery. Delay in publication of this rule could cause NMFS to fail to meet these obligations and would be contrary to the public interest.

This correction document revises § 660.394(f) and (r) of the CFR so that coordinates for the petrale-modified 180–fm (329–m) boundary line and the petrale-modified 250–fm (457–m) boundary line are published correctly to protect overfished species while allowing targeting opportunities for more abundant species. The state of California recommended revising the petrale-modified 180–fm (329–m) boundary line after NMFS had published it in the proposed rule, to improve consistency with the boundaries of other neighboring area restrictions, including essential fish habitat closed areas. These changes, however, were not included in the final rule. These modifications change some latitude and longitude coordinates, and remove some coordinate points; however, the corrected line is similar to the line that was published in the preambles to the proposed and final rule. For clarity, the petrale-modified 180–fm (329–m) boundary line is re-published in its entirety in this correction. Providing prior notice and opportunity for public comment would be contrary to the public interest, as it would allow regulations to remain in the CFR that are confusing due to inconsistencies and overlaps between the groundfish RCA and other area restrictions, including essential fish habitat closed areas. The petrale-modified 250–fm (457–m) boundary line was published in the proposed and final rule with 13 incorrect latitude and longitude coordinates in the portion of the line that lies off the northern Washington coast, south of Cape Alava. These incorrect coordinates moved the depth contour approximation shoreward into shallower waters, with one coordinate bringing the 250–fm (457–m) line to a depth shallower than 70–fm (128–m) which produces an irrational result. Providing prior notice and opportunity for public comment would be contrary to the public interest because allowing the incorrect coordinates to remain in the CFR would allow fishing in an area of shallow water seaward of the RCA, at depths associated with high occurrence of overfished species. Restricting fishing in areas where overfished species are found is one of the primary tools available for keeping fishing mortality of overfished species within the optimum yields. Allowing the incorrect RCA boundary lines to remain in § 660.394 would be contrary to the public interest as it allows, rather than prevents, fishing in areas of overfished rockfish abundance, thereby undermining the intent of the rule. Furthermore, it would create confusion due to inconsistencies between the coordinates published in the **Federal Register** and coordinates available on the NMFS Northwest Region website for use in navigation software. If excessive incidental catch of overfished rockfish species were to occur, commercial and recreational groundfish fisheries that take overfished groundfish species incidentally would have to be restricted and possibly be closed early to ensure that the 2007 OYs for overfished rockfish species would not be exceeded. Such restrictions and/ or closures could be expected to ultimately result in significant revenue and job losses in coastal communities. Providing prior notice and opportunity for public comment is contrary to the public interest because delay in implementation of this correction could result in excess harvest of overfished species that are found in the area that should be closed, which could result in exceeding the rebuilding targets, premature closure of the fishery, or both. This would prevent NMFS from meeting its obligations to rebuild overfished species or manage the fishery to achieve optimum yield.

For the reasons discussed above, good cause also exists to waive the 30 day delay in effectiveness requirement under 5 U.S.C. 553 (d)(3).

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: September 12, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For reasons explained in the preamble, 50 CFR part 660 is corrected by making the following correcting amendments:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.373, paragraph (c)(3) is revised to read as follows:

§ 660.373 Pacific whiting (whiting) fishery management.

* * * * *

(c) * * *

(3) *Ocean Salmon Conservation Zone.* All waters shoreward of a boundary line approximating the 100 fm (183 m) depth contour. Latitude and longitude coordinates defining the boundary line approximating the 100 fm (183 m) depth contour are provided at § 660.393(a). This closure will be implemented through automatic action, defined at 660.370(d), when NMFS projects the Pacific whiting fishery may take in excess of 11,000 Chinook within a calendar year.

* * * * *

■ 3. In § 660.385, paragraph (e) is revised to read as follows:

§ 660.385 Washington coastal tribal fisheries management measures.

* * * * *

(e) *Pacific whiting.* The tribal allocation is 32,500 mt.

* * * * *

■ 4. In § 660.390, paragraphs (c)(3) and (4), and (d)(3) and (4) are revised to read as follows:

§ 660.390 Groundfish conservation areas.

* * * * *

(c) * * *

(3) 48°02.00′ N. lat., 125°16.50′ W. long.;

(4) 48°00.00′ N. lat., 125°16.50′ W. long.; and connecting back to 48°00.00′ N. lat., 125°14.00′ W. long.

* * * * *

(d) * * *

(3) 46°55.00′ N. lat., 124°49.00′ W. long.;

(4) 46°58.00′ N. lat., 124°49.00′ W. long.; and connecting back to 46°58.00′ N. lat., 124°48.00′ W. long.

* * * * *

■ 5. In § 660.394, paragraphs (f), and (r)(6) through (18) are revised to read as follows:

§ 660.394 Latitude/longitude coordinates defining the 180 fm (329 m) through 250 fm (457 m) depth contours.

* * * * *

(f) The 180 fm (329 m) depth contour between 42° N. lat. and the U.S. border with Mexico, modified to allow fishing in petrale sole areas, is defined by straight lines connecting all of the following points in the order stated:

(1) 42°00.00′ N. lat., 124°36.37′ W. long.;

(2) 41°47.79′ N. lat., 124°29.48′ W. long.;

(3) 41°21.16′ N. lat., 124°28.97′ W. long.;

(4) 41°11.30′ N. lat., 124°22.86′ W. long.;

(5) 41°06.51′ N. lat., 124°23.07′ W. long.;

(6) 40°55.20′ N. lat., 124°27.46′ W. long.;

(7) 40°53.95′ N. lat., 124°26.04′ W. long.;

(8) 40°49.96′ N. lat., 124°26.04′ W. long.;

(9) 40°44.49′ N. lat., 124°30.81′ W. long.;

(10) 40°40.58′ N. lat., 124°32.05′ W. long.;

(11) 40°38.82′ N. lat., 124°29.45′ W. long.;

(12) 40°35.65′ N. lat., 124°30.34′ W. long.;
(13) 40°37.39′ N. lat., 124°37.00′ W. long.;
(14) 40°36.03′ N. lat., 124°39.97′ W. long.;
(15) 40°31.42′ N. lat., 124°40.85′ W. long.;
(16) 40°30.00′ N. lat., 124°37.12′ W. long.;
(17) 40°27.36′ N. lat., 124°37.14′ W. long.;
(18) 40°24.81′ N. lat., 124°35.82′ W. long.;
(19) 40°22.45′ N. lat., 124°30.94′ W. long.;
(20) 40°14.00′ N. lat., 124°32.90′ W. long.;
(21) 40°10.00′ N. lat., 124°23.56′ W. long.;
(22) 40°06.67′ N. lat., 124°19.08′ W. long.;
(23) 40°08.10′ N. lat., 124°16.71′ W. long.;
(24) 40°05.90′ N. lat., 124°17.77′ W. long.;
(25) 40°02.80′ N. lat., 124°16.28′ W. long.;
(26) 40°01.98′ N. lat., 124°12.99′ W. long.;
(27) 40°01.52′ N. lat., 124°09.83′ W. long.;
(28) 39°58.55′ N. lat., 124°12.32′ W. long.;
(29) 39°55.74′ N. lat., 124°07.37′ W. long.;
(30) 39°42.78′ N. lat., 124°02.11′ W. long.;
(31) 39°34.76′ N. lat., 123°58.51′ W. long.;
(32) 39°34.22′ N. lat., 123°56.82′ W. long.;
(33) 39°32.98′ N. lat., 123°56.43′ W. long.;
(34) 39°32.14′ N. lat., 123°58.83′ W. long.;
(35) 39°07.79′ N. lat., 123°58.72′ W. long.;
(36) 39°00.99′ N. lat., 123°57.56′ W. long.;
(37) 39°00.05′ N. lat., 123°56.83′ W. long.;
(38) 38°57.50′ N. lat., 123°57.04′ W. long.;
(39) 38°51.19′ N. lat., 123°55.70′ W. long.;
(40) 38°47.29′ N. lat., 123°51.12′ W. long.;
(41) 38°45.48′ N. lat., 123°51.36′ W. long.;
(42) 38°43.24′ N. lat., 123°49.91′ W. long.;
(43) 38°41.61′ N. lat., 123°47.50′ W. long.;
(44) 38°35.75′ N. lat., 123°43.76′ W. long.;
(45) 38°34.92′ N. lat., 123°42.45′ W. long.;
(46) 38°19.84′ N. lat., 123°31.96′ W. long.;
(47) 38°14.38′ N. lat., 123°25.51′ W. long.;
(48) 38°09.39′ N. lat., 123°24.39′ W. long.;
(49) 38°10.02′ N. lat., 123°26.73′ W. long.;
(50) 38°04.11′ N. lat., 123°31.62′ W. long.;
(51) 38°02.11′ N. lat., 123°31.11′ W. long.;
(52) 38°00.23′ N. lat., 123°29.51′ W. long.;
(53) 38°00.00′ N. lat., 123°28.72′ W. long.;
(54) 37°58.07′ N. lat., 123°26.97′ W. long.;
(55) 37°50.80′ N. lat., 123°24.47′ W. long.;
(56) 37°44.21′ N. lat., 123°11.38′ W. long.;
(57) 37°35.67′ N. lat., 123°01.86′ W. long.;
(58) 37°23.42′ N. lat., 122°56.78′ W. long.;
(59) 37°23.23′ N. lat., 122°53.78′ W. long.;
(60) 37°13.97′ N. lat., 122°49.91′ W. long.;
(61) 37°11.00′ N. lat., 122°45.61′ W. long.;
(62) 37°07.00′ N. lat., 122°42.89′ W. long.;
(63) 37°01.10′ N. lat., 122°37.50′ W. long.;
(64) 36°57.81′ N. lat., 122°28.29′ W. long.;
(65) 36°59.83′ N. lat., 122°25.17′ W. long.;
(66) 36°57.21′ N. lat., 122°25.17′ W. long.;
(67) 36°57.81′ N. lat., 122°21.73′ W. long.;
(68) 36°56.10′ N. lat., 122°21.51′ W. long.;
(69) 36°55.17′ N. lat., 122°16.94′ W. long.;
(70) 36°52.06′ N. lat., 122°12.12′ W. long.;
(71) 36°47.63′ N. lat., 122°07.40′ W. long.;
(72) 36°47.37′ N. lat., 122°03.10′ W. long.;
(73) 36°24.14′ N. lat., 121°59.45′ W. long.;
(74) 36°21.82′ N. lat., 122°00.80′ W. long.;
(75) 36°19.47′ N. lat., 122°05.28′ W. long.;
(76) 36°14.67′ N. lat., 122°00.88′ W. long.;
(77) 36°09.34′ N. lat., 121°42.61′ W. long.;
(78) 36°00.00′ N. lat., 121°35.77′ W. long.;
(79) 35°56.78′ N. lat., 121°32.69′ W. long.;
(80) 35°52.71′ N. lat., 121°32.32′ W. long.;
(81) 35°51.23′ N. lat., 121°30.54′ W. long.;
(82) 35°46.07′ N. lat., 121°29.75′ W. long.;
(83) 35°34.08′ N. lat., 121°19.83′ W. long.;
(84) 35°31.41′ N. lat., 121°14.80′ W. long.;
(85) 35°15.42′ N. lat., 121°03.47′ W. long.;
(86) 35°07.21′ N. lat., 120°59.05′ W. long.;
(87) 35°07.45′ N. lat., 120°57.09′ W. long.;
(88) 34°44.29′ N. lat., 120°54.28′ W. long.;
(89) 34°44.24′ N. lat., 120°57.62′ W. long.;
(90) 34°40.04′ N. lat., 120°53.95′ W. long.;
(91) 34°21.16′ N. lat., 120°33.11′ W. long.;
(92) 34°19.15′ N. lat., 120°19.78′ W. long.;
(93) 34°23.24′ N. lat., 120°14.17′ W. long.;
(94) 34°21.47′ N. lat., 119°54.68′ W. long.;
(95) 34°09.79′ N. lat., 119°44.51′ W. long.;
(96) 34°07.34′ N. lat., 120°06.71′ W. long.;
(97) 34°09.43′ N. lat., 120°18.34′ W. long.;
(98) 34°12.50′ N. lat., 120°18.34′ W. long.;
(99) 34°12.50′ N. lat., 120°26.11′ W. long.;
(100) 34°14.02′ N. lat., 120°29.61′ W. long.;
(101) 34°09.55′ N. lat., 120°37.83′ W. long.;
(102) 34°05.35′ N. lat., 120°36.23′ W. long.;
(103) 34°02.21′ N. lat., 120°36.23′ W. long.;
(104) 34°02.21′ N. lat., 120°33.94′ W. long.;
(105) 33°56.82′ N. lat., 120°28.30′ W. long.;
(106) 33°50.40′ N. lat., 120°09.94′ W. long.;
(107) 33°38.21′ N. lat., 119°59.90′ W. long.;
(108) 33°35.35′ N. lat., 119°51.95′ W. long.;
(109) 33°35.99′ N. lat., 119°49.13′ W. long.;
(110) 33°42.74′ N. lat., 119°47.81′ W. long.;
(111) 33°51.63′ N. lat., 119°52.94′ W. long.;
(112) 33°51.62′ N. lat., 119°47.94′ W. long.;
(113) 33°54.67′ N. lat., 119°47.94′ W. long.;
(114) 33°57.84′ N. lat., 119°30.94′ W. long.;
(115) 33°54.11′ N. lat., 119°30.94′ W. long.;
(116) 33°54.11′ N. lat., 119°25.94′ W. long.;

(117) 33°58.14′ N. lat., 119°25.94′ W. long.;

(118) 33°59.31′ N. lat., 119°20.02′ W. long.;

(119) 34°02.91′ N. lat., 119°15.38′ W. long.;

(120) 33°59.04′ N. lat., 119°03.02′ W. long.;

(121) 33°57.88′ N. lat., 118°41.69′ W. long.;

(122) 33°50.89′ N. lat., 118°37.78′ W. long.;

(123) 33°39.16′ N. lat., 118°18.24′ W. long.;

(124) 33°35.44′ N. lat., 118°17.31′ W. long.;

(125) 33°31.37′ N. lat., 118°10.39′ W. long.;

(126) 33°32.71′ N. lat., 117°52.05′ W. long.;

(127) 32°58.94′ N. lat., 117°20.06′ W. long.; and

(128) 32°35.48′ N. lat., 117°28.83′ W. long.

* * * * *

(r) * * *

(6) 48°01.50′ N. lat., 125°40.00′ W. long.;

(7) 47°57.00′ N. lat., 125°37.00′ W. long.;

(8) 47°55.50′ N. lat., 125°28.50′ W. long.;

(9) 47°58.00′ N. lat., 125°25.00′ W. long.;

(10) 48°00.50′ N. lat., 125°24.50′ W. long.;

(11) 48°03.50′ N. lat., 125°21.00′ W. long.;

(12) 48°02.00′ N. lat., 125°19.50′ W. long.;

(13) 48°00.00′ N. lat., 125°21.00′ W. long.;

(14) 47°58.00′ N. lat., 125°20.00′ W. long.;

(15) 47°58.00′ N. lat., 125°18.00′ W. long.;

(16) 47°52.00′ N. lat., 125°16.50′ W. long.;

(17) 47°46.00′ N. lat., 125°06.00′ W. long.; and

(18) 47°44.50′ N. lat., 125°07.50′ W. long.

* * * * *

[FR Doc. E7–18364 Filed 9–17–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XC66

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA). This action is necessary to fully use the C season allowance of the 2007 total allowable catch (TAC) of pollock specified for Statistical Area 630 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 15, 2007, through 1200 hrs, A.l.t., September 18, 2007. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 28, 2007.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by:

• Mail to: P.O. Box 21668, Juneau, AK 99802;

• Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska;

• FAX to 907–586–7557;

• E-mail to *inseason.fakr@noaa.gov* and include in the subject line and body of the e-mail the document identifier: g63plkro3 (E-mail comments, with or without attachments, are limited to 5 megabytes); or

• Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.

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.

NMFS closed the directed fishery for pollock in Statistical Area 630 of the GOA under § 679.20(d)(1)(iii) on August 28, 2007 (72 FR 48946, August 27, 2007).

NMFS has determined that approximately 4,888 mt of pollock remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the C season allowance of pollock in Statistical Area 630, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 630 of the GOA. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 72 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA, effective 1200 hrs, A.l.t., September 18, 2007.

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 opening of pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 11, 2007.

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.

Without this inseason adjustment, NMFS could not allow the pollock in Statistical Area 630 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 28, 2007.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: September 12, 2007.

Emily H. Menashes

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

[FR Doc. 07–4614 Filed 9–13–07; 2:52 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 72, No. 180

Tuesday, September 18, 2007

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 AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 305

[Docket No. APHIS–2007–0084]

RIN 0579–AC57

Consolidation of the Fruit Fly Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to consolidate our domestic regulations regarding exotic fruit flies. Currently, these regulations are contained in six separate subparts, each of which covers a different species of fruit fly, and each of these subparts has parallel sections that are substantially the same as the corresponding sections in the other subparts. Therefore, we are proposing to combine these six subparts into a single subpart. We are also proposing to modify the regulations by adding a mechanism through which quarantined areas can be removed from the regulations as quickly as they are added. These proposed changes would eliminate duplication and enhance the flexibility of the regulations.

DATES: We will consider all comments that we receive on or before November 19, 2007.

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

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* select ‘‘Animal and Plant Health Inspection Service’’ from the agency drop-down menu, then click ‘‘Submit.’’ In the Docket ID column, select APHIS–2007–0084 to submit or view public comments and to view supporting and related materials available electronically. 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.

• *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0084, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0084.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Wayne D. Burnett, Domestic Coordinator, Fruit Fly Exclusion and Detection Programs, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1234; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) administers regulations in 7 CFR part 301, ‘‘Domestic Quarantine Notices,’’ that are designed to prevent the interstate spread of pests that are new to or not widely distributed within the United States. The regulations in part 301 are currently divided into 23 subparts, each of which addresses a specific plant pest concern. Of those 23 subparts, 6 deal with fruit flies, those being the Mexican, Mediterranean, Oriental, Melon, West Indian, and Sapote fruit flies. All of the fruit fly subparts are constructed in the same manner and consist of 11 sections:

• Restrictions on interstate movement of regulated articles;
• Definitions;
• Regulated articles;
• Quarantined areas;
• Conditions governing the interstate movement of regulated articles from quarantined areas;
• Issuance and cancellation of certificates and limited permits;
• Compliance agreements and cancellation;
• Assembly and inspection of regulated articles;
• Attachment and disposition of certificates and limited permits;
• Costs and charges; and
• Treatments.

With the exception of quarantined area descriptions, regulated article lists, and approved treatments that are specific to a particular fruit fly, there is little to no variation in the content of the six subparts; apart from those exceptions, any differences are more editorial than substantive.

Given the large degree to which the provisions of these six subparts overlap, we are proposing to consolidate them into a single subpart. The new ‘‘Subpart—Fruit Flies’’ would allow us to eliminate the duplicative regulatory text that results from maintaining six separate but similar subparts while allowing us to retain all the necessary distinctions dictated by the differing treatments for and biology, life cycle, and host range of each species of fruit fly. This consolidation would result in 66 sections of regulatory text being condensed into 11 sections, with 7 of those sections being no longer than they currently are in any one of the existing subparts.

Given the May 2006 detection (and the July 2006 eradication) of peach fruit fly (*Bactrocera zonata*) in two counties in California, this proposed rule would also include peach fruit fly within the consolidated regulations. The proposed new subpart is discussed below.

Restrictions on Interstate Movement of Regulated Articles

Proposed § 301.32(a) would establish that the interstate movement of regulated articles from quarantined areas is prohibited except in accordance with the regulations. A footnote in this paragraph would note that the interstate movement of any of the fruit flies regulated under the subpart is subject to the regulations in 7 CFR part 330, which contains the Federal plant pest regulations.

Paragraph (b) of § 301.32 would explain that sec. 414 of the Plant Protection Act (7 U.S.C. 7714) provides that the Secretary of Agriculture may, under certain conditions, hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of any plant, plant pest, plant product, article, or means of conveyance that is moving, or has moved into or through the United States or interstate if the Secretary has reason to believe the article is a plant pest or is infested with a plant pest at the time of movement.

These proposed provisions are all drawn from and consistent with those found in the existing fruit fly subparts.

Definitions

Proposed § 301.32–1 contains definitions of the terms used in the subpart; all the terms and their definitions were drawn from the existing fruit fly subparts. Although some definitions would be modified to reflect the fact that they no longer apply to a specific species of fruit fly, we are proposing to make substantive changes to only two definitions: *Core area* and *day degrees.*

In the Mediterranean, West Indian, and Sapote fruit fly subparts, *core area* is defined as a 1-square-mile area surrounding each property where the particular fruit fly has been detected, whereas the term is defined as ''The area within a circle surrounding each detection using a ½ mile radius with the detection as a center point'' in the Mexican and Oriental fruit fly subparts (the term is not defined in the melon fruit fly subpart). In proposed § 301.32–1, we use the definition that appears in the Mexican and Oriental fruit fly subparts, as those definitions have both been recently updated to reflect the use of GPS technology, which allows us to more accurately measure the distance from a positive detection site.

The regulations in the Mexican, Mediterranean, West Indian, and Sapote fruit fly subparts currently define the term *day degrees* as a mathematical construct combining average temperature over time that is used to calculate the length of a particular fruit fly's life cycle. Day degrees are the product of a formula, with all temperatures measured in °F, such as that which appears in the sapote fruit fly regulations: ''[(Minimum Daily Temp + Maximum Daily Temp)/2] − 54° Day Degrees.'' We recently amended the definition of *day degrees* in the Oriental fruit fly subpart to reflect the fact that we can now use weather service data entered into a computer model to more accurately measure day degree accumulation based upon the latest biological information than was previously possible. Therefore, the definition of *day degrees* that appears in proposed § 301.32–1 matches the definition in the Oriental fruit fly subpart, i.e.: ''A unit of measurement used to measure the amount of heat required to further the development of fruit flies through their life cycle. Day-degree life cycle requirements are calculated through a modeling process specific for each fruit fly species.''

Regulated Articles

In proposed § 301.32–2, we have consolidated the lists of regulated articles that appear in each of the six fruit fly subparts and have also included those articles identified as regulated articles for the peach fruit fly. Because there is quite a bit of overlap among the lists, i.e., the same articles are regulated articles in two or more subparts, the list in proposed § 301.32(a) appears in table form, with the articles themselves appearing in the left column and the one or more fruit fly species for which those articles are regulated appearing in the right column.

Quarantined Areas

Proposed § 301.32–3 provides the criteria for the designation of States, or portions of States, as quarantined areas. Apart from the substantive addition we discuss in the following paragraphs, the content of this proposed section has been drawn from, and is consistent with, the corresponding sections in the six existing fruit fly subparts.

The substantive addition we are proposing involves the designation of quarantined areas. The regulations in each of the six subparts, as well as in proposed § 301.32–3(a) in this document, provide APHIS with the ability to temporarily designate any nonquarantined area in a State as a quarantined area when a fruit fly has been found in that area by an inspector, when the Administrator has reason to believe that the fruit fly is present in that area, or when the Administrator considers it necessary to quarantine that area because of its inseparability for quarantine enforcement purposes from localities in which the fruit fly has been found. This temporary designation of a quarantined area is communicated in writing to the owner or person in possession of the nonquarantined area; after that written notice is served, the interstate movement of any regulated article from an area temporarily designated as a quarantined area will be subject to the regulations. As soon as practicable, the area will be added to the list of quarantined areas in the regulations or the temporary designation of a quarantined area may be terminated by the Administrator or an inspector in accordance with the specified criteria for such termination. The owner or person in possession of an area for which designation of a quarantined area is terminated before being added to the regulations will be given notice of the termination as soon as practicable.

In this document, we are proposing to establish a mechanism that would allow us to take a similar approach to removing areas from quarantine. Under our current procedures, we normally add a quarantined area to the regulations through an interim rule, then, after determining that the fruit fly has been eradicated from that area, we issue a second interim rule that removes the area from the regulations. Even with the comparatively expedited process afforded by using an interim rule to remove a quarantined area from the regulations, there is routinely a period of 2 or more weeks that passes between the time we determine that eradication has been achieved and the time we can publish that second interim rule to relieve restrictions on the interstate movement of regulated articles from the area.

In order to address this situation and enable us to remove restrictions on interstate movement as quickly as possible once we determine they are no longer warranted, proposed § 301.32–3(b)(2) would provide that the Administrator or an inspector may terminate the temporary designation of a quarantined area or the designation of a quarantined area listed in paragraph (c) when the Administrator determines that sufficient time has passed without finding additional flies or other evidence of infestation in the area to conclude that the fruit fly no longer exists in that area. The procedure for quickly removing a quarantined area would mirror the current procedure for quickly adding a quarantined area, *i.e.*, written notice would be given to all individuals in the quarantined area, who would then be permitted to move regulated articles from the previously quarantined area without restriction, and the designation of the area as a quarantined area, if listed in the regulations, would then be removed from the list in paragraph (c) as soon as practicable.

Conditions Governing the Interstate Movement of Regulated Articles From Quarantined Areas

The provisions in proposed § 301.32–4 were drawn from the provisions that appear in the corresponding sections of each of the six subparts, which do not differ substantively among themselves except in one instance. In § 301.78–4 of the Mediterranean fruit fly subpart, paragraph (b)(2) includes a provision for the movement of a regulated article without a certificate or limited permit if it is moving as air cargo or as a meal intended for in-flight consumption, and is transiting Los Angeles International Airport in California. Proposed § 301.32–4 would not include this provision, as the more general movement provisions in this section would cover that situation.

Issuance and Cancellation of Certificates and Limited Permits

Proposed § 301.32–5 explains the conditions that must be met in order for a certificate or limited permit authorizing the interstate movement of a regulated article to be issued and provides for the withdrawal of a certificate or limited permit by an inspector under certain circumstances. These proposed provisions are all drawn from and consistent with those found in the existing fruit fly subparts.

Compliance Agreements and Cancellation

Proposed § 301.32–6 provides for the use of and cancellation of compliance agreements, which are provided for the convenience of persons who are involved in the growing, handling, or moving of regulated articles from quarantined areas. These proposed provisions are all drawn from and consistent with those found in the existing fruit fly subparts.

Assembly and Inspection of Regulated Articles

Proposed § 301.32–7 provides instructions for obtaining the services of an inspector when inspection is necessary to secure a certificate or limited permit to move regulated articles interstate. These proposed provisions are all drawn from and consistent with those found in the existing fruit fly subparts.

Attachment and Disposition of Certificates and Limited Permits

Proposed § 301.32–8 provides instructions for attaching certificates or limited permits to regulated articles or their accompanying documentation and requires that copies of the certificate or limited permit be provided to the consignee of the regulated articles upon arrival at their destination. These proposed provisions are all drawn from and consistent with those found in the existing fruit fly subparts.

Costs and Charges

Proposed § 301.32–9 explains the APHIS policy that the services of an inspector that are needed to comply with the regulations are provided without cost between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, to persons requiring those services, but that we will not be responsible for any other costs or charges. These proposed provisions are all drawn from and consistent with those found in the existing fruit fly subparts.

Treatments

In combining the ‘‘Treatments’’ sections found in each subpart, we would omit the treatment schedules that also appear in 7 CFR part 305, ‘‘Phytosanitary Treatments.’’ Proposed new § 301.32–10 would direct the reader to part 305 for the treatment schedules authorized for use against specific fruit flies. Paragraph (a) would set out the treatment schedules for soil within the dripline of plants that are producing or have produced regulated articles, and paragraph (b) would present the premises treatments available for fields, groves, or areas that are located within a quarantined area but outside the infested core area and that produce regulated articles. These treatments have all been drawn from the existing subparts.

We are also proposing to make irradiation available as a treatment option for regulated articles in those cases where it is not already available. The Mexican fruit fly and Mediterranean fruit fly regulations have been amended in recent years to provide for the use of irradiation as a treatment, but the Oriental, Melon, West Indian, and Sapote fruit fly regulations have not been similarly updated. There is an approved irradiation dose listed for each of those species of fruit fly in the irradiation-specific provisions of the phytosanitary treatments regulations in part 305, and the regulations in part 305 currently provide for the use of irradiation as a treatment for imported articles when treatment is necessary to mitigate the risk presented by fruit flies. Our proposed change would allow irradiation to be used to qualify regulated articles for interstate movement as well.

In part 305, § 305.32 contains specific instruction for the use of irradiation as a treatment of regulated fruit to be moved interstate from areas quarantined for Mexican fruit fly, and § 305.33 contains the same information for the treatment of regulated fruit to be moved interstate from areas quarantined for Mediterranean fruit fly. We would amend § 305.32 by replacing specific references to the Mexican fruit fly and the Mexican fruit fly regulations with more general references to fruit flies and the regulations in ‘‘Subpart—Fruit Flies.’’ This change would make the section’s irradiation treatment provisions applicable to all regulated fruit fly species; in addition to making irradiation available for use against the Oriental, Peach, Melon, West Indian, and Sapote fruit flies, this change would render the Mediterranean fruit fly-specific § 305.33 unnecessary, so we would remove and reserve that section. We would also amend the table of treatment schedules in § 305.2(h)(2)(ii), ‘‘Treatment for shipments from U.S. quarantine localities,’’ to indicate that irradiation is an authorized treatment for regulated articles produced in an area quarantined because of fruit flies under our domestic quarantine regulations.

Executive Order 12866 and Regulatory Flexibility Act

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

We are proposing to modify the current regulations controlling exotic fruit flies. Currently, these regulations are contained in 7 CFR part 301 and are divided into separate subparts, each of which covers a different species of fruit fly. Each of these subparts has parallel sections that are substantially similar to the sections in other subparts. Therefore, we are proposing to combine these sections into one subpart that will cover all fruit fly species. We are also proposing to modify the regulations by adding a mechanism through which quarantined areas can be removed from the regulations as quickly as they can be added.

The consolidation of the 66 sections to 11 sections under the new ‘‘Subpart—Fruit Flies,’’ would allow APHIS to eliminate the duplicative regulatory text. This change is an administrative one without any direct economic effect on any entity.

The second change would offer irradiation as one more treatment option for articles regulated because of Oriental, Melon, West Indian, or Sapote fruit flies. There are no areas currently quarantined because of any of these fruit fly species. If there were, the irradiation treatment option may benefit affected entities by providing them with an alternative means of treating regulated articles. We do not know how costs of irradiation treatment may compare to the costs of other treatments, but at least entities would have a broader choice of options.

The third change would affect the interstate movement of regulated articles directly by allowing producers of those commodities in an area that has been under quarantine to more quickly resume moving articles without first having to obtain a certificate or limited permit. Entities that may benefit from this change include fresh fruit producers, nurserymen and tree growers, and transportation entities such as long distance general freight trucking with storage, scheduled freight air transportation companies, and/or short line railroad transportation companies.

There are no significant alternatives to the rule; however, we do not anticipate that the economic effects of these actions would be significant. Impacts on small entities would be attributable to the availability and the cost of irradiation as a treatment against all regulated fruit flies and to the ability of APHIS to relieve quarantine-related restrictions on the interstate movement of regulated articles more quickly. The overall economic effects of these proposed changes are expected to be positive, if minimal. We cannot estimate how many entities would be affected or what percentage of these entities would be small entities; those numbers depend entirely on the number and size of entities that might be present in a quarantined area at the time these proposed provisions become effective or at any time thereafter. While the number of entities affected may eventually prove to be a large number of entities, most of which are likely to be small entities, the economic effects on those entities, while positive, would not be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) State and local laws and regulations will not be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 7 CFR parts 301 and 305 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In part 301, by adding a new ''Subpart—Fruit Flies,'' (§§ 301.32 through 301.32–10) to read as follows:

Subpart—Fruit Flies

Sec.

Subpart—Fruit Flies

§ 301.32 Restrictions on interstate movement of regulated articles.

(a) No person may move interstate from any quarantined area any regulated article except in accordance with this subpart.[1]

(b) Section 414 of the Plant Protection Act (7 U.S.C. 7714) provides that the Secretary of Agriculture may, under certain conditions, hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of any plant, plant pest, plant product, article, or means of conveyance that is moving, or has moved into or through the United States or interstate if the Secretary has reason to believe the article is a plant pest or is infested with a plant pest at the time of movement.

§ 301.32–1 Definitions.

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

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

Certificate. A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of fruit flies and may be moved interstate to any destination.

Commercially produced. Fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Such identification will be based on a variety of indicators, including, but not limited to: Quantity of produce, monocultural practices, pest management programs, good sanitation practices including destruction of culls, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the shipment to a wholesaler or retailer.

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with this subpart.

Core area. The area within a circle surrounding each site where fruit flies have been detected using a ½ mile radius with the detection site as a center point.

Day degrees. A unit of measurement used to measure the amount of heat required to further the development of fruit flies through their life cycle. Day-degree life cycle requirements are calculated through a modeling process specific for each species of fruit fly.

Departmental permit. A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.32–4(c).

Dripline. The line around the canopy of a plant.

[1] Permit and other requirements for the interstate movement of any of the fruit flies regulated under this subpart are contained in part 330 of this chapter.

Fruit fly (fruit flies). The melon fruit fly, Mexican fruit fly, Mediterranean fruit fly, Oriental fruit fly, peach fruit fly, sapote fruit fly, or West Indian fruit fly, or other species of insects found in the family Tephritidae, collectively.

Infestation. The presence of fruit flies or the existence of circumstances that makes it reasonable to believe that fruit flies are present.

Inspector. Any employee of APHIS or other person authorized by the Administrator to enforce this subpart.

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

Limited permit. A document in which an inspector or person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.32–5(b) only to a specified destination and only in accordance with specified conditions.

Mediterranean fruit fly. The insect known as Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), in any stage of development.

Melon fruit fly. The insect known as the melon fruit fly, *Bactrocera cucurbitae* (Coquillett), in any stage of development.

Mexican fruit fly. The insect known as Mexican fruit fly, *Anastrepha ludens* (Loew), in any stage of development.

Move (moved, movement). Shipped, offered to a common carrier for shipment, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved.

Oriental fruit fly. The insect known as Oriental fruit fly, *Bactrocera dorsalis* (Hendel), in any stage of development.

Peach fruit fly. The insect known as peach fruit fly, *Anastrepha zonata* (Saunders), in any stage of development.

Person. Any individual, partnership, corporation, association, joint venture, or other legal entity.

Plant Protection and Quarantine. The organizational unit within the Animal and Plant Health Inspection Service that has been delegated responsibility for enforcing provisions of the Plant Protection Act and related legislation, quarantines, and regulations.

Quarantined area. Any State, or any portion of a State, listed in § 301.32–3(c) or otherwise designated as a quarantined area in accordance with § 301.32–3(b).

Regulated article. Any article listed in § 301.32–2 or otherwise designated as a regulated article in accordance with § 301.32–2(d).

Sapote fruit fly. The insect known as the sapote fruit fly, *Anastrepha serpentina*, in any stage of development.

State. Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

West Indian fruit fly. The insect known as the West Indian fruit fly, *Anastrepha obliqua* (Macquart), in any stage of development.

§ 301.32–2 Regulated articles.

(a) In the following table, the berry, fruit, nut, or vegetable listed in each row in the left column is a regulated article for each of the fruit fly species listed in that row in the right column, unless the article is canned, dried, or frozen below −17.8 °C (0 °F):

Botanical name	Common name(s)	Fruit fly
Abelmoschus esculentus = Hibiscus esculentus	Okra	Melon, Peach.
Acca sellowiana = Feijoa sellowiana	Pineapple guava	Mediterranean, Oriental, Peach.
Actinidia chinensis	Kiwi	Mediterranean.
Aegle marmelos	Indian bael	Peach.
Anacardium occidentale	Cashew	Oriental.
Annona cherimola	Cherimoya	Mexican, Oriental, Peach.
Annona glabra	Pond-apple	Sapote.
Annona muricata	Soursop	Melon, Oriental, Peach.
Annona reticulata	Custard apple, Annona	Melon, Mexican, Oriental, Peach.
Annona squamosa	Custard apple	Peach.
Artocarpus altilis	Breadfruit	Oriental.
Artocarpus heterophyllus	Jackfruit	Oriental.
Averrhoa carambola	Carambola, Country gooseberry	Oriental, West Indian.
Benincasa hispida	Melon, Chinese	Melon.
Brassica juncea	Mustard, leaf	Melon.
Brassica oleracea var. *botrytis*	Cauliflower	Melon.
Brosimum alicastrum	Ramón	West Indian.
Byrsonima crassifolia	Nance	Sapote.
Calophyllum inophyllum	Alexandrian-laurel, Laurel	Oriental.
Cananga odorata	Ylang-Ylang	Oriental.
Capsicum annum	Pepper, chili	Mediterranean, Melon, Oriental.
Capsicum frutescens	Pepper, tabasco	Mediterranean, Melon.
Capsicum frutescens abbreviatum	Oriental bush red pepper	Oriental.
Capsicum frutescens var. *grossum*	Pepper, sweet	Oriental.
Carica papaya	Papaya	Mediterranean, Melon, Oriental, Peach.
Carissa grandiflora	Natal plum	Oriental.
Carissa macrocarpa	Natal plum	Mediterranean.
Casimiroa edulis	Sapote, white	Mediterranean.
Casimiroa greggii = Sargentia greggii	Sargentia, yellow chapote	Mexican.
Casimiroa spp	Sapote.	Mexican.
Cereus coerulescens	Cactus	Oriental.
Chrysophyllum cainito	Star apple	Oriental, Sapote.
Chrysophyllum oliviforme	Caimitillo	Oriental.
Citrofortunella japonica	Orange, calamondin	Peach.
Citrullus colocynthis	Colocynth	Melon.
Citrullus lanatus = Citrullus vulgaris	Watermelon	Melon, Peach.
Citrullus spp	Melon	Melon.
Citrus aurantiifolia	Lime	Mediterranean, Mexican,[1] Oriental, Peach.
Citrus aurantium	Orange, sour	Mediterranean, Mexican, Oriental, Peach.
Citrus jambhiri	Lemon, Rough	Mediterranean.

Botanical name	Common name(s)	Fruit fly
Citrus latifolia	Lime, Persian	Oriental.
Citrus limon	Lemon	Mediterranean,[2] Mexican,[3] Oriental, Peach.
Citrus limon × *reticulata*	Lemon, Meyer	Mediterranean.
Citrus madurensis = × *Citrofortunella mitis*	Orange, Panama	Sapote.
Citrus maxima = *Citrus grandis*	Pummelo or Shaddock	Mediterranean, Mexican, Oriental, Peach.
Citrus medica	Citrus citron	Mediterranean, Mexican, Peach.
Citrus paradisi	Grapefruit	Mediterranean, Melon, Mexican, Oriental, Peach.
Citrus reticulata	Mandarin orange, tangerine	Mediterranean, Mexican, Oriental, Peach.
Citrus reticulata var. *Unshu*	Orange, Unshu	Mediterranean, Oriental.
Citrus reticulata x *C. sinensis* = *Citrus nobilis*	Orange, king	Mediterranean, Melon, Oriental, Peach.
Citrus reticulata x *Fortunella*	Orange, calamondin	Mediterranean, Mexican, Oriental.
Citrus sinensis	Orange, sweet	Mediterranean, Melon, Mexican, Oriental, Peach.
Citrus spp	Citrus	Sapote.
Clausena lansium	Wampi	Oriental.
Coccinia spp	Gourds	Melon, Peach.
Coccoloba uvifera	Seagrape	Oriental.
Coffea arabica	Coffee, Arabian	Oriental.
Cresentia spp	Gourds	Melon, Peach.
Cucumis melo and *Cucumis melo* var. *Cantalupensis*.	Cantaloupe	Melon, Peach.
Cucumis melo var. *conomon*	Melon, oriental pickling	Melon.
Cucumis pubescens and *Cucumis trigonus*	Cucurbit	Melon.
Cucumis sativus	Cucumber	Melon, Oriental, Peach.
Cucumis utilissimus	Melon, long	Peach.
Cucurbita maxima	Squash	Melon.
Cucurbita moschata	Pumpkin, Canada	Melon.
Cucurbita pepo	Pumpkin	Melon.
Cydonia oblonga	Quince	Mexican, Mediterranean, Oriental, Peach, Sapote.
Cyphomandra betaceae	Tomato, tree	Melon.
Diospyros digyna	Black sapote	Sapote
Diospyros discolor	Velvet apple	Oriental.
Diospyros khaki	Japanese persimmon	Mediterranean, Oriental.
Diospyros spp	Sapote	Sapote, West Indian.
Dovyalis hebecarpa	Kitembilla	Oriental, Sapote, West Indian.
Dracena draco	Dragon tree	Oriental.
Elaeocarpus angustifolius	Blue marbletree; New Guinea quandong	Peach.
Elaeocarpus grandiflorus	Lily of the valley tree	Peach.
Elaeocarpus madopetalus	Ma-kok-nam	Peach.
Eriobotrya japonica	Loquat	Mediterranean, Oriental, Peach, West Indian.
Eugenia brasiliensis = *E. dombeyi*	Brazil-cherry, grumichama	Mediterranean, Oriental, Peach.
Eugenia malaccensis	Malay apple	Oriental.
Eugenia uniflora	Surinam cherry	Mediterranean, Oriental, Peach.
Euphoria longan	Longan	Oriental.
Ficus benghalensis	Fig, Banyan	Peach.
Ficus carica	Fig	Mediterranean, Melon, Oriental, Peach.
Ficus macrophylla	Fig, Moreton Bay	Peach.
Ficus retusa	Fig, glossy leaf	Peach.
Ficus rubiginosa	Fig, Port Jackson	Peach.
Ficus spp	Fig	Peach.
Fortunella japonica	Chinese Orange, Kumquat	Mediterranean, Oriental, Peach.
Garcinia celebica	Gourka	Oriental.
Garcinia mangostana	Mangosteen	Oriental.
Grewia asiatica	Phalsa	Peach.
Jubaea chilensis = *Jubaea spectabilis*	Syrup palm	Oriental.
Juglans hindsii	Walnut	Oriental.
Juglans regia	Walnut, English	Oriental.
Juglans spp	Walnut with husk	Mediterranean.
Lablab purpureus subsp. *purpureus* = *Dolichos lablab*.	Bean, hyacinth	Melon.
Lagenaria spp	Gourds	Melon, Peach.
Luffa acutangula	Gourd, ribbed or ridged, luffa	Peach.
Luffa aegyptiaca	Gourd, smooth luffa, sponge	Peach.
Luffa spp	Gourds	Melon, Peach.
Luffa vulgaris	Gourd	Peach.
Lychee chinensis	Lychee nut	Oriental.
Lycopersicon esculentum	Tomato	Mediterranean, Melon,[4] Oriental,[4] Peach.[4]
Madhuca indica = *Bassia latifolia*	Mahua, mowra-buttertree	Peach.
Malpighia glabra	Cherry, Barbados	Oriental, West Indian.
Malpighia punicifolia	West Indian cherry	Oriental.
Malus sylvestris	Apple	Mediterranean, Melon, Mexican, Oriental, Sapote, Peach.

Botanical name	Common name(s)	Fruit fly
Mammea americana	Mammy apple	Mexican, Oriental, Peach, Sapote.
Mangifera foetida	Mango, Bachang	Peach.
Mangifera indica	Mango	All.
Mangifera odorata	Kuine	Peach.
Manilkara hexandra	Sapodilla, balata	Peach.
Manilkara jaimiqui subsp. *emarginata*	Sapodilla, wild	Peach.
Manilkara zapota	Sapodilla, chiku	Oriental, Peach, Sapote, West Indian.
Mimusops elengi	Spanish cherry	Mediterranean, Oriental.
Momordica balsamina	Balsam apple, hawthorn	Peach.
Momordica charantia	Balsam pear, bitter melon	Peach.
Momordica cochinchinensis	Balsam apple, gac	Peach.
Momordica spp	Gourds	Melon, Peach.
Morus nigra	Mulberry	Oriental.
Murraya exotica	Mock orange	Mediterranean, Oriental.
Musa × *paradisiaca* = *Musa paradisiaca* subsp. *sapientum.*	Banana	Oriental.
Musa acuminata = *Musa nana*	Banana, dwarf	Oriental.
Ochrosia elliptica	Orange, bourbon	Peach.
Olea europea	Olive	Mediterranean.
Opuntia ficus-indica = *Opuntia megacantha*	Prickly pear	Oriental.
Opuntia spp	Opuntia cactus	Mediterranean.
Passiflora edulis	Passionflower, passionfruit, yellow lilikoi	Melon, Oriental, West Indian.
Passiflora laurifolia	Lemon, water	Melon.
Passiflora ligularis	Granadilla, sweet	Oriental.
Passiflora quadrangularis	Granadilla, giant	West Indian.
Passiflora tripartita var. *mollissima*	Passionflower, softleaf	Oriental.
Persea americana	Avocado	Mediterranean, Melon, Mexican, Oriental, Peach, Sapote.
Phaseolus lunatus = *Phaseolus limensis*	Bean, lima	Melon.
Phaseolus vulgaris	Bean, mung	Melon.
Phoenix dactylifera	Date palm	Mediterranean, Melon, Oriental, Peach.
Planchonia careya = *Careya arborea*	Patana oak, kumbhi	Peach.
Pouteria caimito	Abiu	Sapote.
Pouteria campechiana	Eggfruit tree	Oriental, Sapote.
Pouteria obovata	Lucmo	Sapote.
Pouteria viridis	Sapote, green	Sapote.
Prunus americana	Plum, American	Mediterranean, Mexican, Oriental, Peach.
Prunus armeniaca	Apricot	Mediterranean, Mexican, Oriental, Peach.
Prunus avium	Sweet cherry	Mediterranean, Peach.
Prunus cerasus	Sour cherry	Mediterranean, Peach.
Prunus domestica	Plum, European	Mediterranean, Mexican, Oriental, Peach.
Prunus dulcis = *P. amygdalus*	Almond with husk	Mediterranean, Peach.[5]
Prunus ilicifolia	Cherry, Catalina	Oriental, Peach.
Prunus lusitanica	Cherry, Portuguese	Oriental, Peach.
Prunus persica	Peach	All.
Prunus persica var. *nectarine*	Nectarine	Mediterranean, Mexican, Oriental, Peach.
Prunus salicina	Japanese plum	Mediterranean, Mexican, Peach, West Indian.
Prunus salicina x *Prunus cerasifera*	Methley plum	Peach.
Psidium cattleianum	Strawberry guava, Cattley guava	Mediterranean, Melon, Oriental.
Psidium cattleianum var. *cattleianum* f. *lucidum*	Yellow strawberry guava	Peach.
Psidium cattleianum var. *littorale*	Red strawberry guava	Oriental, West Indian, Peach.
Psidium guajava	Guava	All.
Punica granatum	Pomegranate	Mediterranean, Mexican, Oriental, Peach.
Pyrus communis	Pear	All.
Pyrus pashia	Kaeuth	Peach.
Pyrus pyrifolia	Pear, sand	Peach.
Rhodomyrtus tomentosa	Myrtle, downy rose	Oriental.
Sandoricum koetjape	Santol	Oriental.
Santalum album	Sandalwood, white	Oriental.
Santalum paniculatum	Sandalwood	Oriental.
Sapotaceae	Sapota, Sapodilla	Mexican.
Sechium edule	Chayote	Melon.
Sesbania grandiflora	Scarlet wisteria tree	Melon.
Sicyes sp.	Cucumber, bur	Melon.
Solanum aculeatissimum	Nightshade	Peach.
Solanum mauritianum = *S. auriculatum*	Tobacco, wild	Peach.
Solanum melongena	Eggplant	Mediterranean,[6] Melon, Peach.
Solanum muricatum	Pepino	Oriental, Peach.
Solanum pseudocapsicum	Jerusalem cherry	Oriental, Peach.
Solanum seaforthianum	Nightshade, Brazilian	Peach.
Solanum verbascifolium	Nightshade, Mullein	Peach.
Spondias dulcis = *Spondias cytherea*	Otaheite apple, Jew plum	Oriental, West Indian.
Spondias mombin	Hog-plum	Sapote, West Indian.
Spondias purpurea	Red mombin	Sapote, West Indian.

Botanical name	Common name(s)	Fruit fly
Spondias spp	Spanish plum, purple mombin or Ciruela	Mexican.
Spondias tuberose	Imbu	Oriental.
Syzygium aquem	Water apple, watery roseapple	Peach.
Syzygium cumini	Java plum, jambolana	Peach.
Syzygium jambos = *Eugenia jambos*	Rose apple	Mediterranean, Mexican, Oriental, Peach, West Indian.
Syzygium malaccense = *Eugenia malaccensis*	Mountain apple, Malay apple	Mediterranean, Peach, West Indian.
Syzygium samarangense	Java apple	Peach.
Terminalia bellirica	Myrobalan, belleric	Peach.
Terminalia catappa	Tropical almond	Oriental, Peach.
Terminalia chebula	Myrobalan, black or chebulic	Mediterranean, Oriental, Peach.
Thevetia peruviana	Yellow oleander	Mediterranean, Oriental.
Trichosanthis spp	Gourds	Melon, Peach.
Vigna unguiculata	Cowpea	Melon.
Vitis spp	Grapes	Mediterranean, Oriental.
Vitis trifolia	Grape	Melon.
Wikstroemia phillyreifolia	Akia	Oriental.
Ziziphus mauritiana	Chinese date, jujube	Peach.

[1] Sour limes are not regulated articles for Mexican fruit fly.
[2] Smooth-skinned lemons harvested for packing by commercial packinghouses are not regulated articles for Mediterranean fruit fly.
[3] Eureka, Lisbon, and Villa Franca cultivars (smooth-skinned sour lemon) are not regulated articles for Mexican. fruit fly.
[4] Only pink and red ripe tomatoes are regulated articles for melon, Oriental, and peach fruit flies.
[5] Harvested almonds with dried husks are not regulated articles for peach fruit fly.
[6] Commercially produced eggplants are not regulated articles for Mediterranean fruit fly.

(b) Plants of the following species in the family Curcurbitaceae are regulated articles for the melon fruit fly only:

Cantaloupe (*Cucumis melo*)
Chayote (*Sechium edule*)
Colocynth (*Citrullus colocynthis*)
Cucumber (*Cucumis sativus*)
Cucumber, bur (*Sicyes* spp.)
Cucurbit (*Cucumis pubescens* and *C. trigonus*)
Cucurbit, wild (*Cucumis trigonus*)
Gherkin, West India (*Cucumis angaria*)
Gourds (*Coccinia, Cresentia, Lagenaria, Luffa, Momordica,* and *Trichosanthis* spp.)
Gourd, angled luffa (*Luffa acutangula*)
Gourd, balsam apple (*Momordica balsaminia*)
Gourd, ivy (*Coccinia grandis*)
Gourd, kakari (*Momordica dioica*)
Gourd, serpent cucumber (*Trichosanthis anguina*)
Gourd, snake (*Trichosanthis cucumeroides*)
Gourd, sponge (*Luffa aegyptiaca*)
Gourd, white flowered (*Lagenaria siceraria*)
Melon, Chinese (*Benincasa hispida*)
Melon, long (*Cucumis utilissimus*)
Pumpkin (*Cucurbita pepo*)
Pumpkin, Canada (*Cucurbita moschata*)
Squash (*Cucurbita maxima*)
Watermelon (*Citrullus lanatus* = *Citrullus vulgaris*)

(c) Soil within the dripline of the plants listed in paragraph (b) of this section or plants that are producing or have produced any article listed in paragraph (a) of this section.

(d) Any other product, article, or means of conveyance not listed in paragraphs (a), (b), or (c) of this section that an inspector determines presents a risk of spreading fruit flies, when the inspector notifies the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of this subpart.

§ 301.32–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section each State, or each portion of a State, in which a fruit fly subject to the regulations in this subpart has been found by an inspector, or in which the Administrator has reason to believe that the fruit fly is present, or that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities in which the fruit fly has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of the fruit fly.

(b)(1) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with the criteria specified in paragraph (a) of this section for listing such area. The Administrator will give a written notice of this temporary designation and a copy of these regulations to the owner or person in possession of the nonquarantined area; thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to the regulations in this subpart. As soon as practicable, the area will be added to the appropriate list in paragraph (c) of this section or the temporary designation of the quarantined area may be terminated by the Administrator or an inspector in accordance with the criteria specified in paragraph (b)(2) of this section. The owner or person in possession of an area for which designation as a quarantined area is terminated will be given notice of the termination as soon as practicable.

(2) The Administrator or an inspector may terminate the temporary designation of a quarantined area or the designation of a quarantined area listed in paragraph (c) of this section when the Administrator determines that sufficient time has passed without finding additional flies or other evidence of infestation in the area to conclude that the fruit fly no longer exists in that area. The Administrator will give written notice of this termination to the owner or person in possession of the area that has been quarantined; thereafter, the interstate movement of regulated articles from the area will no longer be subject to the regulations in this subpart. As soon as practicable, the area listed in paragraph (c) will be removed from the list in paragraph (c) of this section.

(c) The areas described below are designated as quarantined areas:

(1) *Mediterranean fruit fly.* There are no areas in the continental United States quarantined for the Mediterranean fruit fly.

(2) *Melon fruit fly.* There are no areas in the continental United States quarantined for the melon fruit fly.

(3) *Mexican fruit fly.* The following areas in Texas are quarantined for the Mexican fruit fly:

Cameron County. The entire county.

Hidalgo County. The entire county.

Willacy County. The entire county.

(4) *Oriental fruit fly.* There are no areas in the continental United States quarantined for the Oriental fruit fly.

(5) *Peach fruit fly.* There are no areas in the continental United States quarantined for the peach fruit fly.

(6) *Sapote fruit fly.* There are no areas in the continental United States quarantined for the sapote fruit fly.

(7) *West Indian fruit fly.* There are no areas in the continental United States quarantined for the West Indian fruit fly.

§ 301.32–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Any regulated article may be moved interstate from a quarantined area [2] only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.32–5 and 301.32–8;

(b) Without a certificate or limited permit if:

(1) The regulated article originated outside the quarantined area and is either moved in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by fruit flies (such as canvas, plastic, or other closely woven cloth) while moving through the quarantined area; and

(2) The point of origin of the regulated article is indicated on the waybill, and the enclosed vehicle or the enclosure that contains the regulated article is not opened, unpacked, or unloaded in the quarantined area; and

(3) The regulated article is moved through the quarantined area without stopping except for refueling or for traffic conditions, such as traffic lights or stop signs.

(c) Without a certificate or limited permit if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the permit and found by the Administrator to be adequate to prevent the spread of fruit flies; and

(4) With a tag or label bearing the number of the permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container.

§ 301.32–5 Issuance and cancellation of certificates and limited permits.

(a) A certificate may be issued by an inspector [3] for the interstate movement of a regulated article if the inspector determines that:

(1)(i) The regulated article has been treated under the direction of an inspector in accordance with § 301.32–10; or

(ii) Based on inspection of the premises of origin, the premises are free from fruit flies; or

(iii) Based on inspection of the regulated article, the regulated article is free of fruit flies; and

(2) The regulated article will be moved through the quarantined area in an enclosed vehicle or will be completely enclosed by a covering adequate to prevent access by fruit flies; and

(3) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of fruit flies; and

(4) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(b) An inspector [4] will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(1) The regulated article is to be moved interstate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of fruit flies because life stages of the fruit flies will be destroyed by the specified handling, processing, or utilization;

(2) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of fruit flies; and

(3) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates and limited permits for the interstate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article if an inspector has determined that the regulated article is eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article when an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn, either orally or in writing, by an inspector if he or she determines that the holder of the certificate or limited permit has not complied with all conditions in this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

§ 301.32–6 Compliance agreements and cancellation.

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person is aware of this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement.[5]

[2] Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

[3] Services of an inspector may be requested by contacting local PPQ offices, which are listed in telephone directories.

[4] See footnote 3.

[5] Compliance agreement forms are available without charge from the Animal and Plant Health

Continued

(b) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with any of the conditions of this subpart or with any of the provisions of the compliance agreement. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

§ 301.32–7 Assembly and inspection of regulated articles.

(a) Any person, other than a person authorized to issue certificates or limited permits under § 301.32–5(c), who desires to move a regulated article interstate accompanied by a certificate or limited permit must notify an inspector[6] as far in advance of the desired interstate movement as possible, but no less than 48 hours before the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

§ 301.32–8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article must, at all times during the interstate movement, be:

(1) Attached to the outside of the container containing the regulated article; or

(2) Attached to the regulated article itself if not in a container; or

(3) Attached to the consignee's copy of the accompanying waybill: Provided, however, that if the certificate or limited permit is attached to the consignee's copy of the waybill, the regulated article must be sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

§ 301.32–9 Costs and charges.

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside normal business hours.

§ 301.32–10 Treatments.

Treatment schedules listed in part 305 of this chapter to destroy fruit flies are authorized for use on regulated articles. The following treatments also may be used for the regulated articles indicated:

(a) *Soil within the dripline of plants that are producing or have produced regulated articles listed § 301.32(a) or (b).* The following soil treatments may be used for the fruit fly species indicated:

Mexican fruit fly	Drench the soil under the host plants with 5 lb a.i. diazinon per acre (0.12 lb or 2 oz avdp per 1,000 ft^2) mixed with 130 gal of water per acre (3 gal per 1,000 ft^2). Apply at 14- to 16-day intervals as needed. Repeat applications if infestations become established. In addition to the above, follow all label directions for diazinon.
Oriental and Mediterranean fruit flies.	Apply diazinon at the rate of 5 pounds active ingredient per acre to the soil within the dripline with sufficient water to wet the soil to at least a depth of 0.5 inch. Both immersion and pour-on treatment procedures are also acceptable.
All other fruit flies	Apply diazinon at the rate of 5 pounds active ingredient per acre to the soil within the dripline with sufficient water to wet the soil to at least a depth of 0.5 inch.

(b) *Premises.* Fields, groves, or areas that are located within a quarantined area but outside the infested core area and that produce regulated articles may receive regular treatments with either malathion or spinosad bait spray as an alternative to treating fruits and vegetables as provided in part 305 of this chapter. These treatments must take place at 6- to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest) to allow for development of fruit fly egg and larvae. Determination of the time period must be based on the day degrees model for the specific fruit fly. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by aircraft or ground equipment at a rate of 2.4 oz of technical grade malathion and 9.6 oz of protein hydrolysate per acre. The spinosad bait spray treatment must be applied by aircraft or ground equipment at a rate of 0.01 oz of a USDA-approved spinosad formulation and 48 oz of protein hydrolysate per acre. For ground applications, the mixture may be diluted with water to improve coverage.

Subpart—Mexican Fruit Fly Quarantine and Regulations [Removed]

3. Subpart—Mexican Fruit Fly Quarantine and Regulations, consisting of §§ 301.64 through 301.64–10, is removed.

Subpart—Mediterranean Fruit Fly [Removed]

4. Subpart—Mediterranean Fruit Fly, consisting of §§ 301.78 through 301.78–10, is removed.

Subpart—Oriental Fruit Fly [Removed]

5. Subpart—Oriental Fruit Fly, consisting of §§ 301.93 through 301.93–10, is removed.

Subpart—Melon Fruit Fly [Removed]

6. Subpart—Melon Fruit Fly, consisting of §§ 301.97 through 301.97–10, is removed.

Inspection Service, Plant Protection and Quarantine, Emergency and Domestic Programs, 4700 River Road Unit 134, Riverdale, MD 20737–1236, and from local PPQ offices, which are listed in telephone directories.

[6] See footnote 3 to § 301.32–5(a).

Subpart—West Indian Fruit Fly [Removed]

7. Subpart—West Indian Fruit Fly, consisting of §§ 301.98 through 301.98–10, is removed.

Subpart—Sapote Fruit Fly [Removed]

8. Subpart—Sapote Fruit Fly, consisting of §§ 301.99 through 301.99–10, is removed.

PART 305—PHYTOSANITARY TREATMENTS

9. The authority citation for part 305 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

10. In § 305.2, the table in paragraph (h)(2)(ii) is amended by removing, in the entry for ''Areas in the United States under Federal quarantine for the listed pest'', the entries for ''Any fruit listed in § 301.64–2(a) of this chapter'' and ''Any article listed in § 301.78–2(a) of this chapter'' and adding a new entry in their place to read as set forth below.

§ 305.2 Approved treatments.

* * * * *

(h) * * *

(2) * * *

(ii) * * *

Location	Commodity	Pest	Treatment schedule
Areas in the United States under Federal quarantine for the listed pest.			
* * *	* * *	*	
	Any fruit or article listed in § 301.32–2(a) of this chapter.	All fruit fly species of the Family Tephritidae.	IR.
* * *	* * *	*	

* * * * *

§ 305.32 [Amended]

11. Section 305.32 is amended as follows:

a. In the introductory text, by removing the word ''fruit'' and adding the words ''berry, fruit, nut, or vegetable'' in its place, and by removing the citation ''§ 301.64–2(a)'' and adding the citation ''§ 301.32–2(a)'' in its place.

b. In paragraph (a)(1), by removing the words ''Mexican fruit fly'' and adding the words ''the fruit fly of concern'' in their place, and by removing the words ''the fruit'' and adding the words ''the regulated articles'' in their place.

c. In paragraph (a)(2), by removing the words ''fruit, except that fruit'' and adding the words ''regulated articles, except that articles'' in their place.

d. In paragraph (a)(3), by removing the citation ''§ 301.64–6'' and adding the citation ''§ 301.32–6'' in its place.

e. In paragraph (d), by removing the words ''Mexican fruit fly'' and adding the words ''the fruit fly of concern'' in their place.

f. In paragraph (e)(2), by removing the words ''Mexican fruit fly'' and adding the words ''the fruit fly of concern'' in their place.

g. In paragraph (i), by removing the words ''Mexican fruit fly'' and adding the words ''fruit flies'' in their place, and by adding the words ''and vegetables'' after the word ''fruits''.

§ 305.33 [Removed and reserved]

12. Section 305.33 is removed and reserved.

Done in Washington, DC, this 12th day of September 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–18316 Filed 9–17–07; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AD19

Assessment Dividends

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: The FDIC is seeking comments on alternative methods for allocating dividends as part of a permanent final rule to implement the dividend requirements of the Federal Deposit Insurance Reform Act of 2005 (Reform Act) and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (Amendments Act). The existing FDIC regulations on assessment dividends will expire on December 31, 2008.

DATES: Comments must be submitted on or before November 19, 2007.

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

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include ''ANPR on Assessment Dividends'' in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT: Munsell W. St. Clair, Senior Policy Analyst, Division of Insurance and Research, (202) 898–8967 or *mstclair@fdic.gov*; Missy Craig, Senior Program Analyst, Division of Insurance and Research, (202) 898–8724 or *mcraig@fdic.gov*; or Joseph A. DiNuzzo, Counsel, Legal Division, (202) 898–7349 or *jdinuzzo@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In October 2006, the FDIC issued a temporary final rule to implement the dividend requirements of the Reform

Act.[1] At the time, the FDIC stated its intention to initiate a second, more comprehensive notice-and-comment rulemaking on dividends beginning with an advance notice of proposed rulemaking to explore alternative methods for distributing future dividends after the temporary dividend rules expire on December 31, 2008.

The possibility of a dividend before the temporary rule expires appears remote. In fact, because the FDIC has the ability to lower assessment rates below the base assessment rate schedule (2 to 4 basis points for institutions in Risk Category I), the FDIC can, if it chooses, reduce the probability of a dividend occurring thereafter.

Reform Act Requirements

The Federal Deposit Insurance Act (FDI Act), as amended by the Reform Act,[2] requires that the FDIC, under most circumstances, declare dividends from the Deposit Insurance Fund (DIF or fund) when the reserve ratio at the end of a calendar year exceeds 1.35 percent, but is no greater than 1.5 percent.[3] In that event, the FDIC generally must declare one-half of the amount in the DIF in excess of the amount required to maintain the reserve ratio at 1.35 percent as dividends to be paid to insured depository institutions. However, the FDIC's Board of Directors (Board) may suspend or limit dividends to be paid, if the Board determines in writing, after taking a number of statutory factors into account, that:

1. The DIF faces a significant risk of losses over the next year; and
2. It is likely that such losses will be sufficiently high as to justify a finding by the Board that the reserve ratio should temporarily be allowed to grow without requiring dividends when the reserve ratio is between 1.35 and 1.5 percent or exceeds 1.5 percent.[4]

In addition, the statute requires that the FDIC, except in certain limited circumstances, declare a dividend from the DIF when the reserve ratio at the end of a calendar year exceeds 1.5 percent. In that event, the FDIC generally must declare the amount in the DIF in excess of the amount required to maintain the reserve ratio at 1.5 percent as dividends to be paid to insured depository institutions.

The FDI Act directs the FDIC to consider each insured depository institution's relative contribution to the DIF (or any predecessor deposit insurance fund) when calculating an institution's share of any dividend. More specifically, when allocating dividends, the Board must consider:

1. The ratio of the assessment base of an insured depository institution (including any predecessor) on December 31, 1996, to the assessment base of all eligible insured depository institutions on that date (the 1996 assessment base ratio);
2. The total amount of assessments paid on or after January 1, 1997, by an insured depository institution (including any predecessor) to the DIF (and any predecessor fund);
3. That portion of assessments paid by an insured depository institution (including any predecessor) that reflects higher levels of risk assumed by the institution; and
4. Such other factors as the Board deems appropriate.

The statute does not define the term ''predecessor'' (of a depository institution) for purposes of distributing dividends. Predecessor deposit insurance funds are the Bank Insurance Fund (BIF) and the Savings Association Insurance Fund (SAIF), as those were the deposit insurance funds that existed after 1996 until their merger into the DIF pursuant to the Reform Act. The merger was effective March 31, 2006.

Among other things, the statute expressly requires the FDIC to prescribe by regulation the method for calculating, declaring, and paying dividends.[5] In May 2006 the FDIC issued a proposed rule to implement the dividend requirements of the Reform Act.[6] After considering the comments received on the proposed rule, the FDIC, as noted above, issued a temporary final rule on assessment dividends, with a sunset date of December 31, 2008.

The Temporary Final Rule

The temporary final rule mirrors the dividend provisions of the Reform Act, provides definitions (including the definition of a ''predecessor'' depository institution) to implement the statute and details how an institution may request the FDIC's Division of Finance (DOF) to review the FDIC's determination of the institution's dividend amount and how an institution may appeal DOF's response to that request. In the temporary final rule, the FDIC adopted a simple system for allocating any dividends that might be declared during the two-year duration of the regulation. Any dividends awarded before January 1, 2009, will be distributed in proportion to an institution's 1996 assessment base ratio, as determined pursuant to the one-time assessment credit rule.[7]

The sole focus of this ANPR is on the type of assessment dividend allocation method that the FDIC should adopt. Whether and how the FDIC should retain or revise the other aspects of the temporary final rule (such as the timetable for determining and paying dividends and institutions' requests for review) will be addressed in the notice of proposed rulemaking that will follow the ANPR.

II. Alternative Methods

The ANPR presents two general approaches to allocating dividends—the fund balance method and the payments method. These methods are described below.[8]

The allocation methods potentially differ most significantly in the way they balance two of the statutory factors that the FDIC must consider when allocating dividends—institutions' relative 1996 assessment bases and assessments paid after 1996—and, thus, in the way each method treats older versus newer institutions. The fund balance method implicitly balances the two factors; the payments method requires explicit decision making.

''Older'' and ''Newer'' Institutions

In this context, the terms ''older'' and ''newer'' do not simply refer to age. For purposes of this ANPR, the smaller an institution's 1996 assessment base is compared to its current assessment base, the ''newer'' it is. Thus, an institution that was chartered after 1996 and had no 1996 assessment base is a newer institution. An institution chartered before 1996 that has since grown greatly—and whose 1996 assessment base is, therefore, small compared to its current assessment base—is also a newer institution. Conversely, the larger an institution's 1996 assessment base is compared to its current assessment base, the ''older'' it is.

[1] 71 FR 61385 (October 18, 2006).

[2] The Reform Act was included as Title II, Subtitle B, of the Deficit Reduction Act of 2005, Public Law 109–171, 120 Stat. 9, which was signed into law by the President on February 8, 2006.

[3] 12 U.S.C. 1817(e)(2).

[4] This provision would allow the FDIC's Board to suspend or limit dividends in circumstances where the reserve ratio has exceeded 1.5 percent, if the Board made a determination to continue a suspension or limitation that it had imposed initially when the reserve ratio was between 1.35 and 1.5 percent.

[5] The dividend regulation must also include provisions allowing a bank or thrift a reasonable opportunity to challenge administratively the amount of dividends it is awarded. Any review by the FDIC pursuant to these administrative procedures is final and not subject to judicial review.

[6] 71 FR 28804 (May 18, 2006).

[7] 12 CFR 327.53.

[8] Appendix A describes the two methods in more detail, using formulas.

Relative Dividend Shares

For purposes of analyzing the effects of each allocation method on older and newer institutions, the notion of an institution's *relative* dividend share is useful. An institution's relative dividend share at a given time is the ratio of its share of any potential dividend to its share of the current aggregate assessment base. A high relative dividend share means that an institution would receive more than its proportional share of a dividend given its current assessment base; a low relative dividend share means that an institution would receive less than its proportional share of a dividend given its current assessment base.

The notion of a relative dividend share allows comparison of dividend allocation methods by eliminating the effect of size. A newer institution would initially have a zero or low relative dividend share, whatever its size, while an older institution (as that term is used in this ANPR) would initially have a high relative dividend share, again regardless of size.

Some of the most important potential differences between the dividend allocation methods are how quickly and under what circumstances the relative dividend share of a newer institution would equal the relative dividend share of an older institution. Equal shares imply that what an institution paid prior to 1997 (using the 1996 assessment base as a proxy) no longer affects its dividend share. Under most variations of the dividend allocation methods, the relative dividend shares of older and newer institutions may never be exactly equal, but they may become approximately equal; that is, over time, for both older and newer institutions, shares of any potential dividend may approximately equal shares of the current aggregate assessment base. For purposes of the analysis in this ANPR, relative dividends shares will be deemed to be approximately equal (or be said to have *converged*) when the average relative dividend share of the group of institutions that have the highest relative dividend shares as of January 1, 2007, are no more than 15 percent greater (or less) than the average relative dividend shares of newer institutions that initially have no dividend shares.[9] Under both allocation methods, the average relative dividend share of the group of institutions that would have the highest relative dividend shares as of January 1, 2007, would be 2.2; that is, in this group, on average, an institution's share of any potential dividend would be 2.2 times its share of the current assessment base.

The Fund Balance Method

Description

Under the fund balance method, every quarter, each institution would be assigned a dollar portion of the fund balance (its fund allocation), solely for purposes of determining the institution's dividend share. Each institution's most recent fund allocation (as a percentage of the fund balance) would determine its share of any dividend. The fund allocation would increase or decrease each quarter depending upon fund performance and assessments paid by each institution. Specifically:

- Initially, the December 31, 2006 fund balance would be divided up among institutions in proportion to 1996 assessment bases. Thus, initially, each institution's fund allocation would equal its 1996 ratio times the December 31, 2006 fund balance.
- A variant on this method would divide only a portion of the December 31, 2006 fund balance among institutions. The remainder of the fund balance would be unallocated.
- Thereafter, from quarter to quarter, fund allocations would grow or shrink depending upon the performance of the fund.
- Fund losses, FDIC operating expenses and dividends from the fund would diminish an institution's fund allocation, all else equal.
- Fund gains (for example, from investment income or ''ineligible'' premium income, which is discussed immediately below) would increase an institution's fund allocation, all else equal.
- In addition, each ''eligible'' premium would increase an institution's fund allocation, dollar for dollar. An ''eligible'' premium (which would need to be defined) would be the portion of an institution's premium that would count toward increasing its share of dividends.
- Possible definitions for an eligible premium include: (1) All premiums charged; (2) premiums charged up to the lowest rate charged a Risk Category I institution; or (3) something in between, for example, premiums charged up to the maximum rate for a Risk Category I institution, in all cases minus any credit use.[10] Ineligible premiums would be those paid through the use of credits or those paid in cash at rates in excess of the eligible premium rate.
- Eligible premiums would include surcharges in a restoration plan.[11]

Risk Reduction Incentives

As set forth above, when allocating dividends the FDIC is required to take into account the portion of assessments paid by an insured depository institution that reflects higher levels of risk assumed by that institution. Consequently, in defining eligible premiums, an important consideration (which applies to any approach) is the degree to which dividend allocation should reinforce the risk incentives of the risk-based premium system. Would an institution in the riskiest category, for example, get credit for dividend purposes for the full premium it paid or just for some smaller portion? If an eligible premium were defined as a premium paid at the lowest (least-risky) rate, an institution paying the highest assessment rate and an institution paying the lowest assessment rate would increase their dividend shares at the same rate, all else equal. Thus, the institution paying the lower assessment rate on this base would benefit more, thereby increasing the incentives for an institution to lower the risk it poses. On the other hand, if the FDIC defined an eligible premium as any cash premium, dividend awards, per se, would not provide an institution with an incentive to reduce the risk it poses. If the FDIC defined an eligible premium as something in between (for example, cash premiums up to the maximum rate charged to an institution in Risk Category I), the dividend system would give those institutions paying higher rates than the eligible premium rate some incentive to lower risk.

The Treatment of Older Versus Newer Institutions

Fund performance and assessment rates. Under the basic form of the fund balance method, in which the entire fund would be allocated among institutions, *low to moderate* fund losses would lead to older institutions retaining a relatively large share of any dividends for decades, while newer institutions would take decades to obtain a relatively similar share of dividends. In other words, the assessments paid by an institution prior

[9] This group is determined by dividing all institutions into 1 of 10 unequally sized groups, based on the size of their relative dividend shares as of January 1, 2007. Because this date is the beginning of the new risk-based assessment system, initial dividend shares are proportional to shares of the 1996 assessment base.

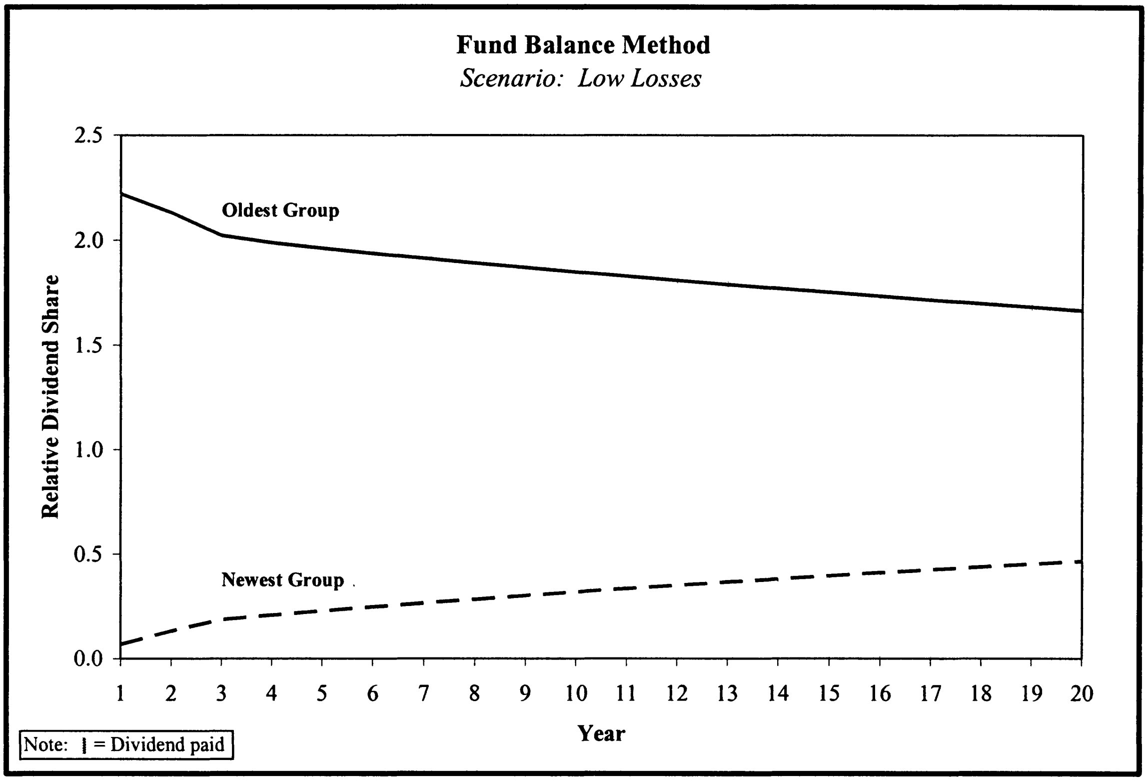
[10] However, an eligible premium would never be negative.

[11] The Reform Act requires that the FDIC adopt a restoration plan whenever the DIF reserve ratio is below 1.15 percent or is expected to be below 1.15 percent within 6 months. The plan must provide that the reserve ratio of the DIF will return to 1.15 percent, ordinarily within 5 years. 12 U.S.C. 1817(b)(3)(E).

to 1997 (using the 1996 assessment base as a proxy) would affect an institution's potential dividend for a very long time. On the other hand, large fund losses would quickly diminish the relative shares of older institutions compared to newer institutions.[12]

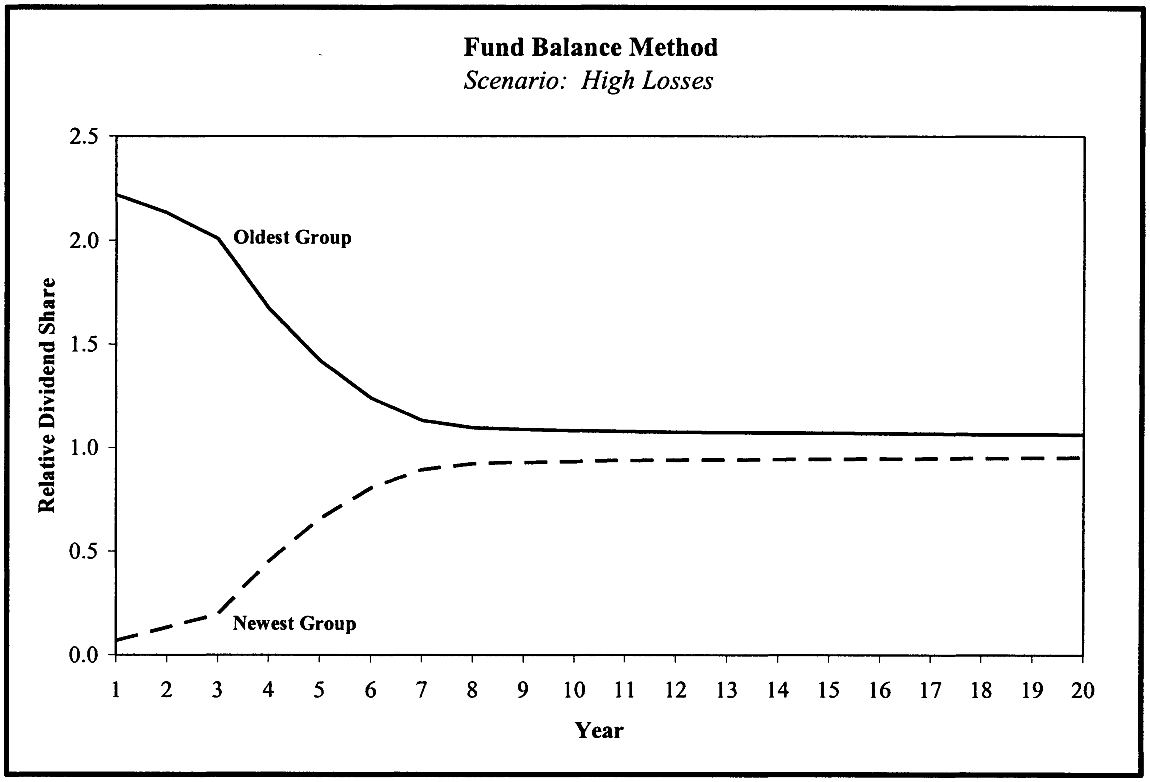
Chart 1 illustrates the relative dividend shares of two groups of institutions—those that initially have no dividend shares (the newest group) and those with the highest relative dividend shares (the oldest group)—under a low loss scenario; Chart 2 illustrates the relative dividend shares of these two groups under a high loss scenario similar to the banking crisis of the late 1980s and early 1990s for the third through tenth years, preceded and followed by low losses in earlier and subsequent years. Assuming high fund losses similar to the banking crisis of the late 1980s and early 1990s, the relative dividend share of the newest group could take only 9 years to become approximately equal to that of the oldest group (i.e., the relative dividend shares of each group would be nearly equal to one).

Chart 1



[12] The results in the text, charts and tables that follow: (1) Assume that the entire fund balance is allocated among institutions; (2) assume that an eligible premium is a premium paid at the minimum rate applicable to a Risk Category I institution; and (3) are based upon a model that divides all institutions into 1 of 10 unequally sized groups, based on the size of their relative dividend shares as of January 1, 2007. The model assumes that all institutions grow at the same rate. It makes many other assumptions, as well, including levels of assessment rates, investment income, and corporate expenses. These assumptions are set out in more detail in Appendix B.

Chart 2



Using the low loss scenario used in Chart 1, Table 1 compares projected dividend share and dividends received for three institutions, each with $500 million in deposits on December 31, 2006; one initially has no dividend share (or credits) because it is new; one initially has the median relative dividend share of those institutions that have any initial dividend share (or credits); and one initially has a very large relative dividend share because it is in the oldest group shown in the charts above. Table 2 makes the comparison under the high loss scenario used in Chart 2. The institutions are assumed to pay the lowest rate applicable in any period. Like Charts 1 and 2, the dividend share amounts in Tables 1 and 2 illustrate that older institutions will benefit for many years from this method absent a repeat of the banking crisis era.

The low loss scenario in Chart 1 and Table 1 (and in subsequent charts in tables) assumes annual insurance losses that are significantly lower than the average annual losses for the past 10 years and that the Board would not lower rates below the base assessment rate schedule (2 to 4 basis points for institutions in Risk Category I). In fact, if the Board did lower assessment rates sufficiently below the base rate schedule, the dividends shown in Chart 1 would not occur.

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Table 1
Illustration of Fund Balance Method
For Three Institutions Each with $500 Million in Deposits
Low Loss Scenario

	Year																				
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Institution from oldest group																					
Dividend Share (bp)	1.66	1.64	1.58	1.49	1.47	1.45	1.43	1.41	1.40	1.38	1.36	1.35	1.33	1.32	1.31	1.29	1.28	1.27	1.25	1.24	1.23
Dividend Received ($000)		0	0	0	0	0	0	0	0	0	0	0	35	62	77	87	94	100	104	109	114
*Median older institution**																					
Dividend Share (bp)	0.86	0.86	0.84	0.84	0.84	0.83	0.83	0.83	0.83	0.83	0.82	0.82	0.82	0.82	0.82	0.81	0.81	0.81	0.81	0.81	0.81
Dividend Received ($000)		0	0	0	0	0	0	0	0	0	0	0	21	38	48	55	60	64	67	71	74
Institution from newest group																					
Dividend Share (bp)	0.00	0.05	0.10	0.14	0.15	0 17	0.18	0.20	0.21	0.22	0.24	0.25	0.26	0.27	0.28	0.29	0.30	0.31	0.32	0.33	0.34
Dividend Received ($000)		0	0	0	0	0	0	0	0	0	0	0	7	13	17	20	22	25	27	29	32

* In this table and all following tables, the median older institution is the institution that has the median initial relative dividend share among institutions that have initial shares greater than zero.

Table 2
Illustration of Fund Balance Method
For Three Institutions Each with $500 Million in Deposits
High Loss Scenario

	Year																				
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Institution from oldest group																					
Dividend Share (bp)	1.66	1.64	1.58	1.47	1.24	1.05	0.92	0.84	0.81	0.81	0.80	0.80	0.80	0.79	0.79	0.79	0.79	0.79	0.79	0.79	0.79
Dividend Received ($000)		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Median older institution																					
Dividend Share (bp)	0.86	0.86	0.84	0.84	0.81	0.78	0.76	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75
Dividend Received ($000)		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Institution from newest group																					
Dividend Share (bp)	0.00	0.05	0.10	0.14	0.33	0.49	0.60	0.66	0.68	0.69	0.69	0.69	0.69	0.70	0.70	0.70	0.70	0.70	0.70	0.70	0.70
Dividend Received ($000)		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

All else equal, higher assessment rates (whether to cover rapid insured deposit growth or from other causes) would shorten the time to convergence of relative dividend shares of older and newer institutions. However, the effect of higher rates would likely be less marked than the effect of high fund losses similar to those during the banking crisis of the late 1980s and early 1990s.

Institutions chartered in the future. Absent significant insurance fund losses, the fund balance will tend to increase over time. Under the fund balance method, all else equal, the larger the fund grows, the longer it would take an institution chartered in the future to obtain a share of potential dividends that was roughly equal to its share of the assessment base; that is, for its relative dividend share to approximately equal that of older institutions. Thus, an institution chartered 30 years from now could take many decades to obtain a share of potential dividends that was roughly equal to its share of the assessment base.

Simplicity

The fund balance method relies on more data than the payments method described below and is more complex, which may reduce transparency. Both methods of fund allocation discussed in this ANPR are operationally feasible, however.

Remaining Decision-Making Requirements

Both methods require the FDIC to define eligible premiums. Once the definition of an eligible premium is chosen, however, the fund balance method allocates dividends among older and newer institutions automatically, without the need for explicit FDIC decision making about the relative importance to assign the 1996 assessment base compared to post-1996 eligible premiums.[13] Only if the FDIC adopted the variant of this method in which something less than the December 31, 2006 fund balance was allocated among older institutions would it make explicit decisions about how to allocate dividends between older and newer institutions.

The Payments Method

Description

In its basic form, under most probable scenarios, the fund balance method would most likely benefit older institutions. The payments method, on the other hand, offers considerably more options for allocating dividends between older and newer institutions. The payments method could be constructed so as to benefit older institutions for many years, or it could be constructed to accelerate convergence between older and newer institutions.

Under the payments method, unlike the fund balance method, neither fund performance nor dividends paid would affect dividend shares directly. Rather than hinging on its assigned portion of the fund balance, an institution's share of any dividend would depend upon its (and its predecessors') 1996 assessment base (or, equivalently, its 1996 ratio), weighted in some manner, and its quarterly assessments under the new assessment system. Specifically:

- Initially, each institution's dividend share would depend upon its 1996 assessment base compared to all other institutions. For example, initially, each institution's dividend share could equal:

1. Its 1996 ratio times the fund balance on December 31, 2006;
2. Its 1996 ratio times the fund balance at some other time; or
3. Its 1996 ratio times insurance fund assessment income over some period of time leading up to December 31, 1996, in each case as a percentage of the total for all institutions.

- The resulting value assigned to each institution based on its 1996 ratio could either remain unchanged or be assigned a declining weight over time.
- The possible definitions of an eligible (and an ineligible) premium are the same as those under the fund balance method. However, under certain variations of this method discussed below, assessments offset through credit use could increase an institution's dividend share.
- Cumulative eligible premiums paid into the fund since 1996 would add to an institution's share.
- Alternatively, the FDIC could count only eligible premiums paid over some recent period, for example, the most recent 3, 5, 10 or 15 years. In contrast, the fund balance method would necessarily take into account all assessment payments made under the new assessment system.
- Another variation would allow the FDIC to subtract dividends paid to an institution from its eligible premiums. The Board would explicitly determine the relative importance to assign to each institution's 1996 assessment base and to its eligible premiums paid under the new system. The rate at which the relative importance of eligible premiums paid under the new system increased (and the relative importance of the 1996 assessment base decreased) could be slow or fast. Alternatively, the FDIC could, at the outset of the system, reserve the right to change the balance in the future.[14]

Risk Reduction Incentives

As under the fund balance method, the degree to which dividend allocation would reinforce the risk incentives of the risk-based premium system would depend upon the FDIC's definition of an eligible premium.

The Treatment of Older Versus Newer Institutions

Relative weight of the 1996 assessment base. The relative weight to be accorded the 1996 assessment base could have a great influence on how quickly the relative dividend shares of newer and older institutions would converge.

How the payments method would affect the dividend shares of older and newer institutions would depend on the weight that the Board assigned the 1996 assessment base (initially and over time) compared to the weight it assigned eligible premiums paid each year after 1996. Two illustrative variations of the payments method are described below.

Variation 1. The Board could, as under the fund balance method, initially divide the 2006 fund balance based on each institution's share of the December 1996 assessment base. Eligible premiums after 1996 would be added to that amount. As illustrated in Chart 3 and Table 3, this method of implementation would result in older institutions retaining relatively large dividend shares for many years—similar to the fund balance method—given low losses. (Compare with Chart 1 and Table 1.)[15]

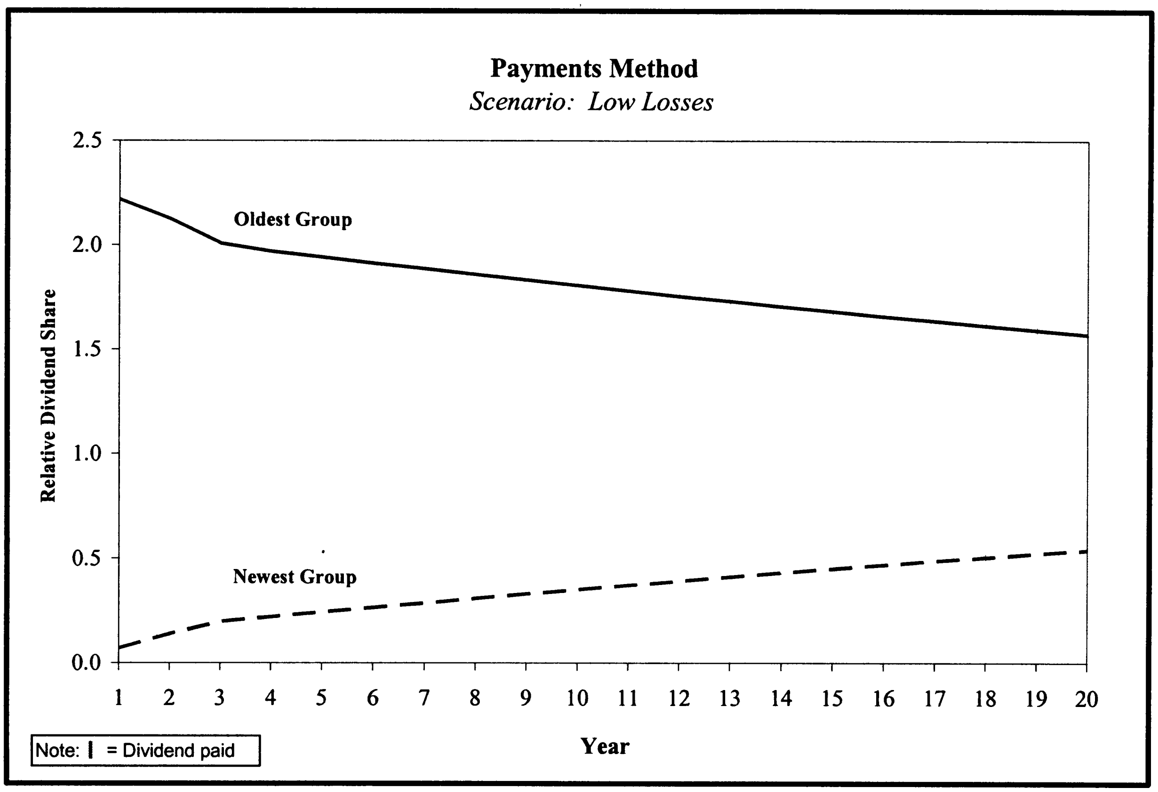
[13] The FDIC's definition of an ''eligible'' premium would have some effect on the way the fund balance method allocates dividends between newer and older institutions, considered as a group. The lower the eligible premium rate, the longer older institutions, as a group, would retain a relatively larger share of dividends, all else equal.

[14] A simplified version of the payments method would substitute assessment bases as proxies for eligible premiums. Each institution's share of any dividend would depend on its portion of the 1996 assessment base, weighted in some fashion, and its cumulative quarterly assessment bases under the new system. In this version, an institution would automatically have an added incentive to be charged the lowest possible rate, since, given identical assessment bases, an institution paying the lowest assessment rate would increase its dividend share at the same rate as an institution paying the highest assessment rate, all else equal.

[15] The low loss scenario in Chart 3 and Table 3 again assumes annual insurance losses that are significantly lower than the average annual losses

Continued

Chart 3



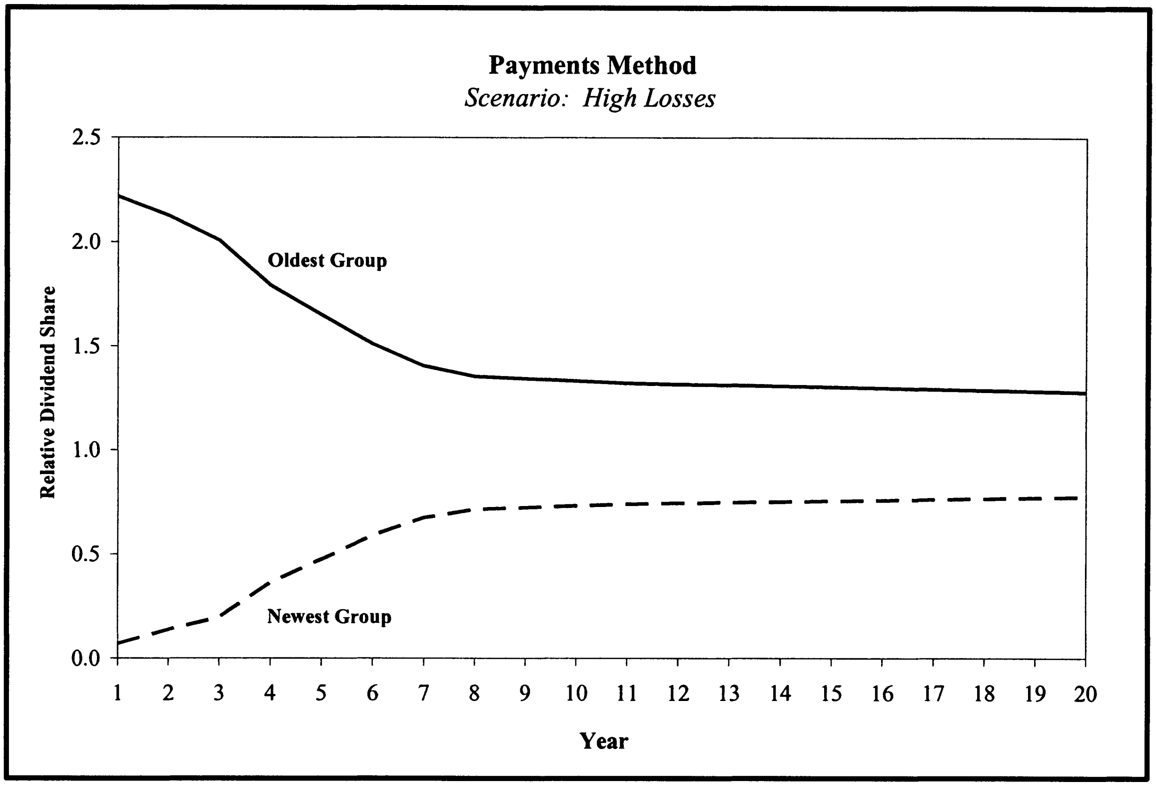
for the past 10 years and that the Board would not lower rates below the base assessment rate schedule (2 to 4 basis points for institutions in Risk Category I). In fact, if the Board did lower assessment rates below the base rate schedule, the dividends shown in Chart 3 and Table 3 would not occur. See also footnote 13.

Table 3
Payments Method
Scenario 2—Low Losses

	Year																				
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Institution from oldest group																					
Dividend Share (bp)	1.66	1.64	1.57	1.47	1.45	1.43	1.41	1.39	1.37	1.35	1.33	1.31	1.30	1.28	1.26	1.24	1.22	1.21	1.19	1.18	1.16
Dividend Received ($000)		0	0	0	0	0	0	0	0	0	0	0	34	60	74	84	90	95	99	103	107
Median older institution																					
Dividend Share (bp)	0.86	0.86	0.84	0.84	0.84	0.83	0.83	0.83	0.83	0.82	0.82	0.82	0.81	0.81	0.81	0.81	0.81	0.80	0.80	0.80	0.80
Dividend Received ($000)		0	0	0	0	0	0	0	0	0	0	0	21	38	48	54	59	63	67	70	74
Institution from newest group																					
Dividend Share (bp)	0.00	0.05	0.10	0.15	0.16	0.18	0.20	0.21	0.23	0.24	0.26	0.27	0.29	0.30	0.32	0.33	0.35	0.36	0.37	0.39	0.40
Dividend Received ($000)		0	0	0	0	0	0	0	0	0	0	0	8	14	19	22	25	28	31	34	37

Under the payments method—unlike the fund balance method—fund gains and losses would not *directly* affect an institution's relative dividend share. However, higher insurance fund losses could lead to higher assessment rates, which would affect relative dividend shares. All else equal, higher assessment rates (either resulting from fund losses or rapid insured deposit growth) would tend to make the relative dividend shares of older and newer institutions converge more quickly. However, as illustrated in Chart 4 and Table 4, the effect of an increase in higher assessment rates on relative dividend shares would not be as large as the direct effect of large insurance losses under the fund balance method. (Compare with Table 2 and Chart 2.) [16]

Chart 4



[16] Chart 4 and Table 4 assume that an institution's dividend share is initially determined by multiplying its 1996 ratio times the fund balance at the end of 2006 and adding eligible premiums over time. See also footnote 13.

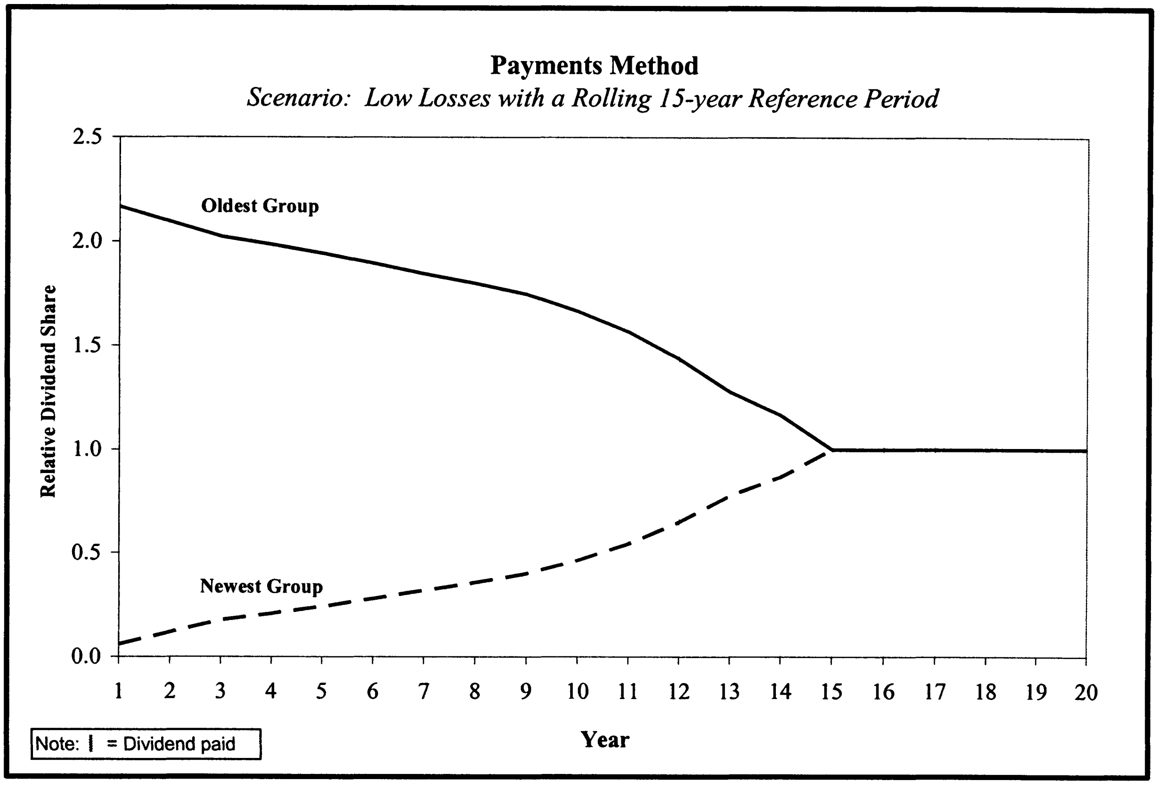
Table 4
Payments Method
High Loss Scenario

	Year																				
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Institution from oldest group																					
Dividend Share (bp)	1.66	1.64	1.57	1.47	1.32	1.22	1.11	1.04	1.00	0.99	0.98	0.98	0.97	0.97	0.97	0.96	0.96	0.96	0.95	0.95	0.95
Dividend Received ($000)		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Median older institution																					
Dividend Share (bp)	0.86	0.86	0.84	0.84	0.82	0.80	0.79	0.78	0.78	0.77	0.77	0.77	0.77	0.77	0.77	0.77	0.77	0.77	0.77	0.77	0.77
Dividend Received ($000)		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Institution from newest group																					
Dividend Share (bp)	0.00	0.05	0.10	0.15	0.27	0.35	0.44	0.50	0.53	0.54	0.54	0.55	0.55	0.55	0.56	0.56	0.56	0.56	0.57	0.57	0.57
Dividend Received ($000)		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Variation 2. Another way to implement the payments method would be to consider only premiums paid over some prior period (such as the previous 15 years). When the prior period covered any year before 2007, the years 1997 through 2006 would be skipped, since the great majority of institutions paid no deposit insurance premiums then. Thus, for example, to determine dividend shares at the end of 2009, the method would consider premiums paid from 1985 through 1996 and from 2007 through 2009. Premiums paid during 2007, 2008 and 2009 would include only eligible premiums. However, because the weight accorded the 1996 ratio would effectively decline to zero over time, eligible premiums after 2006 would include eligible premiums offset with credits. An eligible premium paid in 1996 or any earlier year would be calculated as an institution's share of the 1996 assessment base times total deposit insurance fund assessment income in that year.[17]

As illustrated in Chart 5 and Table 5, newer and older institutions would have equal relative dividend shares after 15 years.[18] [19] [20]

Chart 5



[17] For years prior to 1990, deposit insurance fund assessment income used to produce Chart 5 and Table 5 includes such income for both the FDIC and the Federal Savings and Loan Insurance Corporation.

[18] The low loss scenario in Chart 5 and Table 5 again assumes annual losses that are significantly lower than the average annual losses for the past 10 years and that the Board would not lower rates below the base assessment rate schedule (2 to 4 basis points for institutions in Risk Category I). In fact, if the Board did lower assessment rates below the base rate schedule, the dividends shown in Chart 5 and Table 5 would not occur. See also footnote 13.

[19] If eligible premiums did not include eligible premiums offset with credits, newer institutions would actually have higher relative dividend shares than older ones after 15 years (because older institutions would use credits in early years, which would reduce their eligible premiums). Thereafter, however, the dividend shares of older and newer institutions would tend to converge again.

[20] A high loss scenario would lead to a more rapid convergence.

Table 5

Payments Method

Low Loss Scenario with a Rolling 15-Year Reference Period

	Year																				
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Institution from oldest group																					
Dividend Share (bp)	1.66	1.60	1.55	1.50	1.47	1.44	1.40	1.36	1.33	1.29	1.23	1.16	1.06	0.95	0.86	0.74	0.74	0.74	0.74	0.74	0.74
Dividend Received ($000)		0	0	0	0	0	0	0	0	0	0	0	28	44	51	50	54	58	62	65	68
Median older institution																					
Dividend Share (bp)	0.86	0.86	0.85	0.84	0.84	0.83	0.83	0.83	0.82	0.82	0.81	0.80	0.78	0.77	0.76	0.74	0.74	0.74	0.74	0.74	0.74
Dividend Received ($000)		0	0	0	0	0	0	0	0	0	0	0	21	36	45	50	54	58	62	65	68
Institution from newest group																					
Dividend Share (bp)	0.00	0.04	0.09	0.13	0.15	0.18	0.21	0.24	0.26	0.30	0.34	0.40	0.48	0.57	0.64	0.74	0.74	0.74	0.74	0.74	0.74
Dividend Received ($000)		0	0	0	0	0	0	0	0	0	0	0	13	27	38	50	54	58	62	65	68

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The relative dividend shares of older and newer institutions would converge similarly if an institution's dividend share were initially determined by multiplying its 1996 ratio by the fund balance at the end of 2006 and adding eligible premiums over time, where the weight accorded the 1996 ratio diminished linearly and steadily to zero over 15 years (again allowing eligible premiums to include eligible premiums offset with credits). However, institutions chartered in the future would be at a greater disadvantage than if only recent payments (e.g., those made within the previous 15 years) were considered.

In general, the length of time it would take an institution chartered in the future to obtain a share of potential dividends that was roughly equal to its share of the assessment base would depend to a great extent upon the relative weight to be accorded the 1996 ratio. If the 1996 ratio (or 1996 assessment base) were heavily weighted and payments accumulated indefinitely, it could take an institution chartered in the future many years to obtain an equal share of potential dividends. However, if the 1996 ratio received a small weight and only very recent assessments (rather than cumulative payments) were considered, it would take an institution chartered in the future only a short time to obtain an equal share of potential dividends.

Simplicity

The payments method would require less data than the fund balance method and would be relatively easy to administer. If the payments method considered only recent payments (e.g., 3 or 5 years), data needs and record retention requirements for the industry and the FDIC would be particularly simple.[21]

Decision-making

Like the fund balance method, the payments method would require that the FDIC define eligible premiums. Under the payments method the FDIC would have considerably more options regarding the allocation of dividends between older and newer institutions than it would under the fund balance method. The FDIC would decide:

- How much weight to accord the 1996 assessment base compared to premiums paid under the new system;
- Whether that weight should change over time and whether the FDIC should reserve the right to change the weight in the future; and
- Whether all payments under the new system should be considered or only more recent payments.

III. Request for Comments

The FDIC requests comment on all aspects of the fund balance method and the payments method, and on any alternative approach not presented in this ANPR that a commenter chooses to discuss. In particular, the FDIC invites comment on the following:

1. Which method is preferable and why?
2. Is a method not presented in this ANPR preferable? If so, why?
3. Is there a variation or way of implementing any method that is preferable or less preferable? If so, why?
4. How should an eligible premium be defined and why should it be so defined?
5. If the payments method were selected:

(a) Are any of the two illustrative variations more or less preferable?

(b) Should eligible premiums be considered only over some limited prior period, such as 3, 5 or 10 years?

(c) Should premiums paid with credits count toward dividend share, as described in the second illustrative variation?

(d) Should premiums paid over some very recent period (e.g., the previous year) be excluded to avoid creating an incentive for institutions to increase their assessment base and assessments in hope of obtaining a larger dividend?

(e) Should dividends paid to an institution be subtracted from its eligible premiums?

(f) How should the 1996 assessment base be taken into account or weighted? How quickly should its relative importance decrease over time? Should the FDIC reserve the right to change its relative importance in the future?

6. Is any method particularly burdensome or not burdensome?
7. Any other aspects of either of the two methods or of a method not presented in this ANPR.

Appendix A—Definition and Description of the Fund Balance Method

An institution's dividend share would equal the dollar portion of the fund balance assigned to it (its fund allocation) as a percent of the total adjusted fund balance. An institution's dividend share would be defined recursively. Its initial dividend share ($DS_{i,0}$), on January 1, 2007, would be:

$$DS_{i,0} = \frac{a_{i,0}}{F_0} \qquad (1)$$

where $a_{i,0}$ is institution i's fund allocation on January 1, 2007, and F_0 is the fund balance as of December 31, 2006.

For quarters ending after December 31, 2006, adjusted fund balances are used. An adjusted fund balance differs from the actual fund balance by excluding estimated premium income for the quarter. Premiums earned for each quarter would be estimated because they would not be determined for, and collected from, each institution until the following quarter.

An institution's fund allocation at time 0 would be derived from its share of the 1996 aggregate assessment base. Therefore, equation (1) can be restated as:

$$DS_{i_0} = \frac{a_{i,0}}{F_0} = \frac{(f_i)(F_0)}{F_0} = f_i \qquad (2)$$

In the equation above, f_i is the share of the 1996 aggregate base for institution i and is calculated as:

[21] The simplification of the method in which assessment bases are used as a proxy for actual payments requires only that institutions and the FDIC retain data on assessment bases.

$$f_i = \frac{ab_{96i}}{\sum_{j=1}^{N} ab_{96j}} \qquad (3)$$

where ab_{96i} is 1996 assessment base for institution i and j = 1 through N represents all institutions. Institutions that did not exist on December 31, 1996 or are not successors to institutions in existence then would have 1996 ratios set to zero.

An institution's dividend share for each succeeding quarter ($DS_{i,t}$) would be:

$$DS_{i,t} = \frac{a_{i,t}}{F_t} \qquad (4)$$

where $DS_{i,t}$ is institution i's dividend share at time t, t is the end of the most recent quarter for which the fund balance is available, $a_{i,t}$ is institution i's fund allocation at time t and F_t is the adjusted fund balance at time t.

Institution i's fund allocation at time t, $a_{i,t}$, in the equation (4) is derived as:

$$a_{i,t} = (a_{i,t-1})(h_t)(r_t) + p_{i,t} \qquad (5)$$

where h_t is an adjustment factor accounting for the growth or shrinkage of the adjusted fund balance (as defined above) from t-1 to t after excluding eligible premiums for the quarter ending at time t-1 that were collected at time t, r_t is a redistribution factor that redistributes the shares of institutions that failed after time t-1 but before time t and $p_{i,t}$ is eligible premiums paid by institution i at time t for the quarter ending at time t-1.

The adjustment factor for the growth or shrinkage of the adjusted fund balance, h_t, is calculated as:

$$h_t = \frac{F_t - \sum_{i=1}^{m_t} p_{i,t}}{F_{t-1}} \qquad (6)$$

where m_t is all institutions in existence at time t. The redistribution factor, r_t, is calculated as:[22]

$$r_t = \frac{\sum_{i=1}^{m_{t-1}} a_{i,t}}{\sum_{i=1}^{m_t} a_{i,t-1}}.^{22} \qquad (7)$$

$$DS_{i,B} = \frac{a_{i,t}}{\sum_{i=1}^{m_B} a_{i,t}} \qquad (8)$$

Definition and Description of the Payments Method

An institution's dividend share, $DS_{i,t}$, would be defined as:

[22] However, an institution might fail after the end of the quarter on which dividend shares are calculated (which will always be the fourth quarter), but before distribution of a dividend. Consequently, a final adjustment of dividend shares may be necessary. This share would be calculated as follows:

See equation 8 above.

where $DS_{i,B}$ is institution i's dividend share at the time a dividend is distributed, B is the time at which a dividend is distributed, and m_B is all institutions at time t that had not failed as of time B.

$$DS_{i,T} = \frac{w_T\left(ab_{96,i}\right) + (1 - w_T)\sum_{t=T-k}^{T} p_{i,t}}{w_T\left(\sum_{j=1}^{m_T} ab_{96,j}\right) + (1 - w_T)\sum_{j=1}^{m_T}\sum_{t=T-k}^{T} p_{j,t}}, \text{ s.t. } 0 \le w_T \le 1 \qquad (9)$$

where $DS_{i,T}$ is institution i's current dividend share, T is the end of the most recent quarter for which assessment base data is available, w_T is the weight assigned to the 1996 ratio for period T, $ab_{96,i}$ is the 1996 assessment base for institution i, T-k is the earliest period to be covered, which could be all periods after 2006 or some recent period, such as the most recent 3, 5, 10 or 15 years, $p_{i,t}$ is eligible premiums paid by institution i at time t for the quarter ending at time t-1, and m_T is total institutions as of time T.[23], [24]

Appendix B—Model Assumptions

Among other things, the model assumes the following:

1. Investment income in 2007 equals 4.7 percent of the start-of-year fund balance. For each year thereafter, it equals 4.57 percent of that year's starting fund balance. These estimates are based on projections from an investment model that relies on Blue Chip forecasts of the yield curve through 3rd quarter 2008.
2. The initial assessment rate schedule is 3 basis points above the base rate schedule; thus, the initial minimum rate is 5 basis points. Rates fall to base rates the year after the fund reserve ratio reaches or exceeds 1.25 percent. Risk Category I institutions that pay rates between the minimum and maximum rate for the category are assumed to pay 0.6 basis points above the minimum rate, which reflects the current weighted average rate for the group.
3. Any restoration plan is assumed to be a 5 year plan. Surcharges in a restoration plan are estimated using an iterative procedure to account for the effect of credit use. During a restoration plan, an institution may use no more than 3 basis points in credit use.
4. Operating expenses for 2007 are $988 million and grow at an annual rate of 5 percent thereafter.
5. Insured and domestic deposits are assumed to grow at 5 percent per year.
6. The beginning fund balance at 2007 equals $50,165 million.
7. Credit use is limited by the 90 percent rule during 2008, 2009, and 2010. (No institution may apply credits to offset more than 90 percent of an assessment for these years.)
8. Institutions are assigned to 1 of 10 credit groups and 1 of 6 assessment rate groups based on December 31, 2006 Call Report and TFR data, CAMELS information, and one-time credits. An institution's credits are determined by its share of the December 31, 1996 assessment base. An institution's credit group is determined by the ratio of its credits to its December 31, 2006 deposits. Because an institution's initial relative dividend share is determined analogously, based upon the ratio of its share of the December 31, 1996 assessment base to its share of the December 31, 2006 deposits, institutions in the same credit group will have similar relative dividend shares. In the tables and charts in the text comparing the relative dividend shares under alternative allocation methods, the ''oldest'' group refers to the credit group with the most credits relative to their December 31, 2006 deposits, those whose credits are more than 12 basis points of their December 31, 2006 deposits. The initial weighted average of credits-to-deposits for the credit group is 15.6 basis points.
9. High fund losses correspond to the losses incurred by the Bank Insurance Fund from 1987 to 1994, with losses measured relative to total domestic deposits. Low fund losses assume losses are equal to 0.1 basis points of domestic deposits each year.

Dated at Washington, DC, this 11th day of September, 2007.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 07–4596 Filed 9–17–07; 8:45 am]

BILLING CODE 6714–01–P

[23] Under Variation 2 described in the text, T-k would not include any year before 2007. When a dividend share in any year depended upon premiums paid before 1997, the premiums would be factored into w_T rather than being included in $p_{i,t}$.

[24] If an institution failed after the end of the quarter on which dividend shares were calculated (which will always be the fourth quarter), but before distribution of a dividend, a final adjustment of dividend shares may be necessary. This share would be calculated simply by deleting the failed institution's payments and 1996 ratio from the preceding formulas.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE273; Notice No. 23–07–03–SC]

Special Conditions: Adam Aircraft Industries Model A700; External Fuel Tank Protection During Gear-Up or Emergency Landing

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Adam Aircraft Industries Model A700 airplane. This airplane will have a novel or unusual design feature(s) associated with an External Centerline Fuel Tank (ECFT) that increases the total capacity of fuel by 184 gallons. The tank is located below the fuselage pressure shell immediately below the wing. The Adam A700 ECFT is a novel, unusual and a potentially unsafe design feature that may pose a hazard to the occupants during a gear-up or emergency landing due to fuel leakage and subsequent fire. Traditional aircraft construction places the fuel tanks in a protected area within the wings and/or fuselage. Fuel tanks located in these areas are well above the fuselage skin and are inherently protected by the wing and fuselage structure. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before November 19, 2007.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration (FAA), Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE273, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: CE273. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Peter L. Rouse, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri, 816–329–4135, fax 816–329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to CE273.'' The postcard will be date stamped and returned to the commenter.

Background

On April 12, 2004, Adam Aircraft Industries applied for a type certificate for their new model A700. The model A700 aircraft is a 6–8 seat pressurized, retractable-gear, carbon composite structure, airplane with two turbofan engines mounted on the aft fuselage. The A700 aircraft is a design evolution of the previously certificated Adam A500, with the aft fuselage mounted turbofan engines replacing the two centerline thrust, turbocharged, reciprocating engines. To maintain a max cruise range similar to the A500 and consistent with other aircraft in the same class as the A700, an external fuel tank located below the fuselage pressure shell and immediately below the wing, has been incorporated in to the A700 design. The A700 and its external fuel tank location are shown in Figure 1:

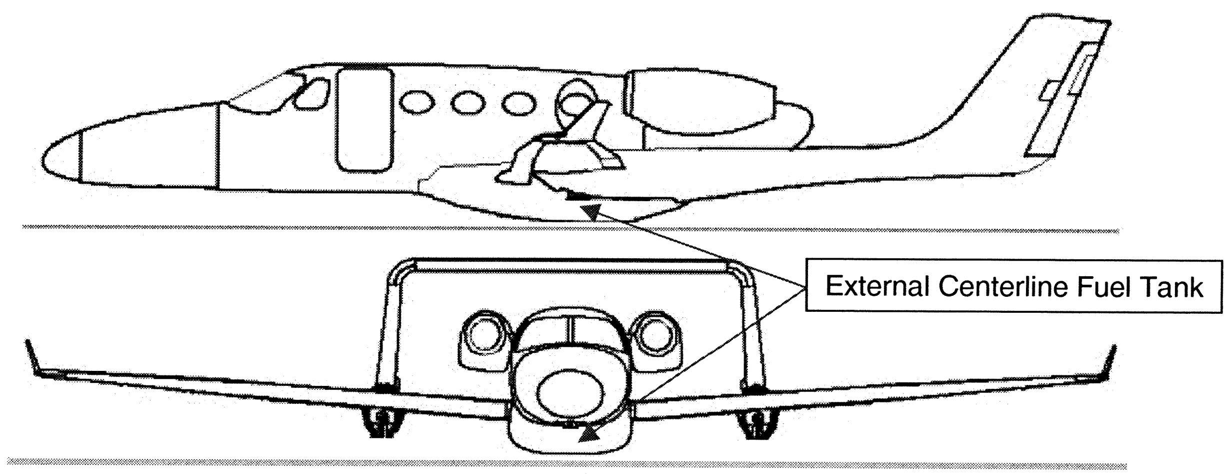

Figure 1 – A700 Side and Front View

The Adam A700 ECFT is a novel, unusual and a potentially unsafe design feature that may pose a hazard to the occupants during a gear-up or emergency landing due to fuel leakage and subsequent fire. Conventional aircraft construction places the fuel tanks in a protected area within the wings and/or fuselage. Fuel tanks located in these areas are well above the fuselage skin and are inherently protected by the wing and fuselage structure.

The A700 ECFT must meet the inherent qualities associated with the protection of the fuel system as provided by 14 CFR part 23. The FAA requires Adam Aircraft to address the following areas with their ECFT design:

1. *Load Path:* Conventional design approaches establish independent load paths from the keel/skid plate to the airframe major structure where the fuel tanks are isolated from reacting the gear-up or emergency landing loads. The A700 ECFT design must react to the gear-up or emergency landing loads in a similar manner.

2. *Fuel Management:* Conventional design approaches use fuel tanks located outside of the wings, or wing centerbox, as auxiliary fuel tanks, and not primary fuel tanks. The fuel in the auxiliary fuel tanks is depleted before the primary fuel tanks, thus the auxiliary tanks are usually empty upon landing. In a similar manner, the A700 ECFT must be an auxiliary fuel tank, and not primary fuel tank. The A700 must deplete the fuel in the ECFT before depleting the fuel in the primary fuel tanks.

3. *Location/Geometry:* A700 must preclude the scenario where the fuel tank is the first point of contact with the ground in a gear-up or emergency landing.

Regulatory Review and Discussion

14 CFR part 11, 21, 23 and 25 regulations that pertain to the location of the ECFT location are §§ 11.19, 21.16, 21.21(b)(2), 23.303, 23.473(d), 23.561, 23.721, 23.967, 23.994 and 25.963.

The following rules provide a regulatory framework in which to apply additional requirements, beyond the existing requirements, in order to address novel, unusual and potentially unsafe design features.

A special condition is defined in 14 CFR part 11, § 11.19:

§ 11.19

A special condition is a regulation that applies to a particular aircraft design. The FAA issues special conditions when we find that the airworthiness regulations for an aircraft, aircraft engine, or propeller design do not contain adequate or appropriate safety standards, because of a novel or unusual design feature.

A special condition is applied via the criteria defined in 14 CFR part 21, § 21.16:

§ 21.16

[If the Administrator finds that the airworthiness regulations of this subchapter do not contain adequate or appropriate safety standards for an aircraft, aircraft engine, or propeller because of a novel or unusual design feature of the aircraft, aircraft engine or propeller, he prescribes special conditions and amendments thereto for the product. The special conditions are issued in accordance with Part 11 of this chapter and contain such safety standards for the aircraft, aircraft engine or propeller as the Administrator finds necessary to establish a level of safety equivalent to that established in the regulations.]

An unsafe condition is spoken to in 14 CFR part 21, § 21.21(b)(2):

§ 21.21

An applicant is entitled to a type certificate for an aircraft in the normal, utility, acrobatic, commuter, or transport category, or for a manned free balloon, special class of aircraft, or an aircraft engine or propeller, if—

(b) The applicant submits the type design, test reports, and computations necessary to show that the product to be certificated meets the applicable airworthiness, aircraft noise, fuel venting, and exhaust emission requirements of the Federal Aviation Regulations and any special conditions prescribed by the Administrator, and the Administrator finds—

(2) For an aircraft, that no feature or characteristic makes it unsafe for the category in which certification is requested.

External fuel tank installations below the wing or fuselage were not envisioned in the development of 14 CFR part 23 fuel tank (and fuel system) regulations. As such, regulations that are not directly applicable to conventional fuel tank installations, but related to the novel, unusual and potentially unsafe design features, were reviewed. The following 14 CFR part 23 certification requirements do contain regulatory language that can be used to determine the adequate or appropriate safety standards for novel, unusual and potentially unsafe design features of the Adam A700 ECFT.

§ 23.303

Unless otherwise provided, a factor of safety of 1.5 must be used.

§ 23.473(d)

The selected limit vertical inertia load factor at the center of gravity of the airplane for the ground load conditions prescribed in this subpart may not be less than that which would be obtained when landing with a descent velocity (V), in feet per second, equal to 4.4 (W/S) ¼ except that this velocity need not be more than 10 feet per second and may not be less than seven feet per second.

§ 23.721

[For commuter category airplanes that have a passenger seating configuration, excluding pilot seats, of 10 or more, the following general requirements for the landing gear apply:

(a) The main landing-gear system must be designed so that if it fails due to overloads during takeoff and landing (assuming the overloads to act in the upward and aft directions), the failure mode is not likely to cause the spillage of enough fuel from any part of the fuel system to constitute a fire hazard.

(b) Each airplane must be designed so that, with the airplane under control, it can be landed on a paved runway with any one or more landing-gear legs not extended without sustaining a structural component failure that is likely to cause the spillage of enough fuel to constitute a fire hazard.

(c) Compliance with the provisions of this section may be shown by analysis or tests, or both.]

14 CFR part 23, 23.303 and 23.473(d) relate to the associated margin of safety required above the limit loading condition and the required limit ground loading conditions. 14 CFR part 23, § 23.721 is applicable to commuter category airplanes; however, the intent is to ensure that the failure of the landing gear does not cause the spillage of enough fuel from any part of the fuel system to constitute a fire hazard. The location of the ECFT, in direct line behind the nose landing gear, makes it particularly vulnerable to failures of the nose landing gear.

14 CFR part 23 contains a limited scope of regulatory requirements pertaining to fuel tank (and fuel system) protection during a gear-up or emergency landing. These current regulations pertaining to the fuel tank (and fuel system) state:

§ 23.561(b)

The structure must be designed to [give each occupant every reasonable chance of escaping serious injury when—]

(1) Proper use is made of seats, safety belts, and shoulder harnesses provided for in the design;

(2) The occupant experiences the static inertia loads corresponding to the following ultimate load factors—

(i) Upward, 3.0g for normal, utility, and commuter category airplanes, or 4.5g for acrobatic category airplanes;

(ii) Forward, 9.0g;

(iii) Sideward, 1.5g; and

(iv) Downward, 6.0g when certification to the emergency exit provisions of Sec. 23.807(d)(4) is requested; and

(3) The items of mass within the cabin, that could injure an occupant, experience the static inertia loads corresponding to the following ultimate load factors—

(i) Upward, 3.0g;

(ii) Forward, 18.0g; and

(iii) Sideward, 4.5g.

§ 23.561(c)

Each airplane with retractable landing gear must be designed to protect each occupant in a landing—

(1) With the wheels retracted;

(2) With moderate descent velocity; and

(3) Assuming, in the absence of a more rational analysis—

(i) A downward ultimate inertia force of 3g; and

(ii) A coefficient of friction of 0.5 at the ground.

§ 23.967(a):

Each fuel tank must be able to withstand, without failure, the vibration, inertia, fluid, and structural loads that it may be subjected to in operation.

§ 23.967(e):

Fuel tanks must be designed, located, and installed so as to retain fuel:

(1) When subjected to the inertia loads resulting from the ultimate static load factors prescribed in § 23.561(b)(2) of this part; and

(2) Under conditions likely to occur when the airplane lands on a paved runway at a normal landing speed under each of the following conditions:

(i) The airplane in a normal attitude and its landing gear retracted.

(ii) The most critical landing gear leg collapsed and the other landing gear legs extended.

§ 23.994

Fuel system components in an engine nacelle or in the fuselage must be protected from damage which could result in spillage of enough fuel to constitute a fire hazard as a result of a wheels-up landing on a paved runway.

The regulatory requirements of § 23.967(e)(1) refer to § 23.561(b)(2), which is an occupant protection rule. The requirements of § 23.561(b)(2) do not have a downward component for non commuter category airplanes. To comply with the requirements of § 23.967(e)(2), the moderate descent velocity identified in § 23.561(c)(2), which is also an occupant protection rule, has been used as an acceptable means of compliance for traditional fuel tank designs that do not have novel, unusual and potentially unsafe design features. These regulations have historically demonstrated an acceptable level of safety for traditional fuel tank designs that do not have novel, unusual and potentially unsafe design features. Existing aircraft designs with this satisfactory service history have the fuel tanks located well above the fuselage skin and are inherently protected by the wing and the fuselage structure, thus providing a ''crush zone.''

The intent of 14 CFR part 23, § 23.994 is to minimize the hazard to the airplane due to fuel system components that are affected (those which are traditionally located in the fuselage or engine nacelle) when the underside of the airplane contacts the ground in a wheels-up landing. The intent is applicable to those components below the fuselage.

14 CFR part 23 guidance materials recognize there may be situations when installing auxiliary fuel tanks that require special conditions because of a novel, unusual and potentially unsafe design feature. Advisory Circular (AC) 23–10, Auxiliary Fuel Systems for

Reciprocating and Turbine Powered Part 23 Airplanes, states in paragraph 5:

5. CERTIFICATION BASIS

a. New Type Certificates. For the issuance of a new type certificate, an airplane must be shown to comply with the certification basis established in accordance with § 21.17 of the Federal Aviation Regulations (FAR). If the regulations do not provide adequate or appropriate standards because of a novel or unusual design feature, special conditions will be prescribed in accordance with § 21.16.

b. Other Design Changes. Not applicable for new TCs.

c. Unsafe Features or Characteristics. Notwithstanding compliance with the established certification basis, § 21.21 precludes approval if there is any feature or characteristic that makes the airplane unsafe. The applicant should recognize that it may be necessary, because of such a feature or characteristic, to impose special requirements which exceed the standards of the certification basis, to eliminate the unsafe condition.

Since 14 CFR part 23 airworthiness regulations do not contain adequate or appropriate safety standards for the external fuel tank design, a review of the safety standards contained in 14 CFR part 25 was conducted to evaluate their applicability to the novel, unusual and potentially unsafe design feature of the ECFT. 14 CFR part 25, § 25.963 has regulatory requirements that ensure that fuel tanks within the fuselage contour are in a protected position.

§ 25.963(d):

Fuel tanks within the fuselage contour must be able to resist rupture, and to retain fuel, under the inertia forces prescribed for the emergency landing conditions in Sec. 25.561. In addition, these tanks must be in a protected position so that exposure of the tanks to scraping action with the ground is unlikely.

§ 25.963(e)(1):

Fuel tank access covers must comply with the following criteria in order to avoid loss of hazardous quantities of fuel:

(1) All covers located in an area where experience or analysis indicates a strike is likely must be shown by analysis or tests to minimize penetration and deformation by tire fragments, low energy engine debris, or other likely debris.

14 CFR part 25, § 25.963(d) is applicable to transport category airplanes; however, the object is to ensure that in the event of an emergency landing, the fuel tank is in a protected position so that exposure of the tank to scraping action with the ground is unlikely. The location of the ECFT, located below the fuselage, makes it particularly vulnerable to scraping action with the ground in the event of a gear-up landing.

14 CFR part 25, § 25.963(e) is applicable to transport category airplanes, and only applies to the access panels; however, the object is to prevent a hazard as a result of the impact by tire fragments or debris. This philosophy would be applied to the ECFT (not just access panels) to prevent hazardous leakage of fuel in the event of impact from tire fragments or other likely debris.

14 CFR part 25 guidance materials also recognize the need to protect the auxiliary fuel tanks beyond the velocities used as an acceptable means of compliance. The first chapter of AC 25–8, Auxiliary Fuel Systems Installations, is titled ''Fuel System Installation Integrity and Crashworthiness'' and the first paragraph states the following:

''Survivable accidents have occurred at vertical descent velocities greater than the 5 feet per second (f.p.s.) referenced in § 25.561. The energy from such descents is absorbed by the structure along the lower fuselage. As the limits of survivable accidents are approached, structure under the main cabin floor is crushed and deformed and the volume below the floor, where the auxiliary fuel tanks are frequently located, may be reduced and reshaped. For this reason the tank material chosen by the applicant should provide resilience and flexibility; or, in the absence of these characteristics, the tank installation should provide extra clearance from structure that can be crushed or be protected by primary structure not likely to be crushed.''

Due to the concern of the Adam A700 ECFT to potentially contact the ground in a gear-up or emergency landing, we contacted the FAA Office of Accident Investigation, Safety Analysis Branch to determine the number of incidents/accident where an aircraft landed with the landing gear retracted or the landing gear collapsed on the ground. The search used was conducted over a 25 year period from January 1982 thru January 2007, and queried all N-registered aircraft that were not 14 CFR parts 121, 135, or 129 and that had at least one of the following occurrence codes:

Gear Collapsed
Main Gear Collapsed
Nose Gear Collapsed
Tail Gear Collapsed
Complete Gear Collapsed
Other Gear Collapsed
Gear Not Extended
Gear Not Retracted
Gear Retraction On Ground

During the queried timeframe, there were 740 reported incidents/accidents, which yields an average of about 30 reported incidents/accidents per year. There were no injuries or fatalities associated with the 740 reported incidents/accidents. All of the reported incidents/accidents involved aircraft having fuel in the center section of the wing area confined by the front and rear spars and the side of body wing ribs. The data shows a high probability for a landing gear failure, malfunction or not being extended during landing and that there is a good safety record for configurations involved in these incidents/accidents. The certification standards for the Adam A700 ECFT need to consider the placement of the ECFT outside of the protective wing area confined by the front and rear spars and the side of body wing ribs configurations, and the high probability of the ECFT contacting the ground.

Because of the Adam A700 ECFT's novel, unusual and potentially unsafe design features, it is necessary to impose a specific vertical velocity requirement that exceed the 5 feet per second requirement normally imposed on conventional airplane fuel tank designs. Conventionally installed fuel tanks, located within the fuselage and wing primary structure, have used § 23.561(c)(2) as an acceptable means of compliance to the requirements of § 23.967(e)(2). Fuel tank installations are not bound by regulatory requirements to use § 23.561(c)(2) as an acceptable means of compliance to the requirements of § 23.967(e)(2). The standards contained in § 23.561(c)(2), which is an occupant protection rule, provided adequate or appropriate standards for conventionally installed fuel tanks. Initially, the FAA proposed to use the vertical velocity requirements (26.8 feet per second) contained in § 23.562 as a means of compliance to the requirements of § 23.967(e)(2), as this rule is also an occupant protection rule. The velocities cited in the two occupant protection rules range from 5 feet per second to 26.8 feet per second. The velocity cited in § 23.561(c)(2) is the velocity for a minor crash landing, where the velocity in § 23.562 is the upper limit of a survivable crash landing. The requirements contained in § 23.967(e)(2) allow for the conditions likely to occur, and the range of velocities likely to occur during a survivable crash landing is 5 feet per second–26.8 feet per second; therefore, there is ample regulatory room in which to determine an acceptable means of compliance. The FAA proposal to use the vertical velocity requirements contained in § 23.562 as a means of compliance to the requirements of § 23.967(e)(2) for the initially proposed ECFT design, was withdrawn by the FAA due to Adam Aircraft proposing to redesign the ECFT. As such, the FAA researched the standards within 14 CFR part 23 to determine a vertical velocity within the range of velocities likely to occur that provide adequate or appropriate standards, mitigate potential unsafe conditions. The normal precision approach speed for the Adam A700 will be approximately 120 KIAS. This approach speed will result in a normal vertical descent velocity of 10.6 feet per second. The normal precision approach speed is a speed that falls within the speeds that are likely to occur when the airplane lands on a paved runway at a normal landing speed. 14 CFR part 23, § 23.473(d) requires that the aircraft be able to absorb a limit load imposed by a vertical descent velocity of 10 feet per second for landing conditions. Combining the velocity requirements of § 23.473(d) and a commensurate 1.5 factor of safety, as required by § 23.303, would result in a vertical descent velocity of 12.25 feet per second. The derivation used to determine the ultimate velocity based upon the § 23.473(d) limit vertical inertia load and the factor of safety defined in § 23.303 is shown below:

The relationship between velocity, acceleration and distance is shown by the equation:

$$V_2^2 = V_1^2 + 2ad$$

The relationship between force and acceleration is shown by the equation:

$$F = ma$$

The relationship between limit force (load) and ultimate force (load) is shown by the equation:

$$F_{Ultimate} = F_{Limit} C_{FactorofSafety}$$

Assuming a constant mass of the object, an ending velocity of zero and grouping the terms:

$$V_{Limit}^2 = 2\frac{F_{Limit}}{m}d \quad \text{and} \quad V_{Ultimate}^2 = 2\frac{F_{Limit} C_{FactorofSafety}}{m}d$$

Thus, the relationship between limit velocity and ultimate velocity is shown by the equation:

$$V_{Ultimate} = V_{Limit}\sqrt{C_{FactorofSafety}}$$

Conventional airplanes with fuel tanks located below the fuselage are designed such that the ground impact loads are not absorbed by the tanks. Fuel tanks in these locations are especially vulnerable to these ground impact loads if design precautions/mitigations are not taken. If the ECFT is designed such that it absorbs gear-up landing loads, a gear-up landing could damage the ECFT and result in the spillage of enough fuel to constitute a fire hazard. The location of the A700 ECFT should be evaluated for ground impact in a gear-up landing, and design precautions/mitigations should be taken such that load paths do not go through the fuel tanks. The location of the A700 ECFT should be evaluated for exposure of the tank to impact from runway debris or from fragments emanating from failures of the tires. The location of the ECFT, below and in direct line behind the nose landing gear, makes it particularly vulnerable to debris from failures of the nose landing gear tires.

The A700 ECFT, compared to other somewhat similar designs, was the only design that contained a significant percentage of the total fuel quantity of fuel below the fuselage and the wing box. Existing somewhat similar designs have their relatively smaller percentage of the total fuel quantity in their lower fuselage tanks and it is transferred out to the primary fuel tanks, so they are emptied early in the flight. The existing somewhat similar designs use the fuel tanks below the fuselage as auxiliary fuel tanks, and they do not feed the engines directly, but rather are used to replenish the primary fuel tanks. The A700 ECFT design indicates the ECFT is an auxiliary fuel tank, does not feed the engines directly and is used to replenish the primary fuel tanks.

Based on our current understanding of the A700 ECTF design, the FAA understands that Adam Aircraft may have provided the following mitigating design features:

1. The keel and truss assembly that make up the protective structure in current A700 ECFT design configuration affords the equivalent level of protection as currently certificated aircraft with fuel tanks located in the wings, or wing centerbox.

2. The ECFT is an auxiliary fuel tank, and it does not feed the engines directly and is used to replenish the primary fuel tanks. The fuel in the ECFT will be used before the fuel in the wing tanks.

The mitigating features offered by Adam Aircraft: Independent load path, fuel management, and location/geometry, coupled with dynamic drop testing and a rational analysis provide the FAA with sufficient justification to reduce the descent velocity from 12.25 feet per second to no less than 5 feet per second.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Adam Aircraft Industries must show that the model A700 meets the applicable provisions of 14 CFR part 23, as amended by Amendments 23–1 through 23–55 thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 23) do not contain adequate or appropriate safety standards for the model A700 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the model A700 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the ''Noise Control Act of 1972''.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The model A700 will incorporate the following novel or unusual design features: External Centerline Fuel Tank (ECFT).

Applicability

As discussed above, these proposed special conditions are applicable to the Adam Aircraft Industries Model A700. Should Adam Aircraft Industries apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the proposed special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on Adam Aircraft Industries Model A700 airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following proposed special conditions are issued as part of the type certification basis for the Adam Aircraft Industries Model A700.

1. SC 23.561(c): Each airplane with retractable landing gear and external fuel tank system(s) located beneath the fuselage must be designed to protect each occupant in a landing—

1. With the wheels retracted;

2. With descent velocity of 12.25 feet per second UNLESS mitigating design features are incorporated that address:

i. Independent load path

ii. Fuel management

iii. Location/Geometry

iv. Other safety enhancing design features as proposed by the applicant

If adequate mitigation is demonstrated for all the above design features, the FAA will reduce the descent velocity to no less than 5 feet per second.

and

3. By defining, based on a rational analysis, supported by tests:

i. A downward ultimate inertia force; and

ii. A coefficient of friction of 0.5, or a rational analysis for a coefficient of friction, at the ground.

Compliance with SC 23.561(c)(2) will be demonstrated by dynamic drop test.

2. SC 23.721: The following general requirements for the landing gear apply:

1. The landing-gear system must be designed so that if it fails due to overloads during takeoff and landing (assuming the overloads to act in the upward and aft directions), the failure mode is not likely to cause the spillage of enough fuel from any part of the external fuel tank system(s) located beneath the fuselage to constitute a fire hazard.

2. The airplane must be designed so that, with the airplane under control, it can be landed on a paved runway with any one or more landing-gear legs not extended without sustaining a structural component failure that is likely to cause the spillage of enough fuel to constitute a fire hazard.

3. Compliance with the provisions of this section may be shown by analysis or tests, or both.

3. SC 23.994: Fuel system components in external fuel tank system(s) located beneath the fuselage must be protected from damage which could result in spillage of enough fuel to constitute a fire hazard as a result of a wheels-up landing on a paved runway.

4. SC 23.XXX: Fuel tanks within and below the fuselage contour must be installed in accordance with the requirements prescribed in Sec. 23.967. External fuel tank system(s) located beneath the fuselage must have the following design mitigations:

1. The external fuel tank system(s) must be in a protected position so that exposure of the tank to scraping action, or impact, with the ground is unlikely during a gear-up landing of the most critical landing gear or landing gears, when landing on a paved runway.

2. The external fuel tank system(s) must be protected by dedicated protective structure, and the protective structure load paths must be independent of the fuel system during a gear-up landing of the most critical landing gear or landing gears, when landing on a paved runway.

3. The hazard to the external fuel tank system(s) that results from impact by landing gear tire fragments or other likely debris must be minimized.

4. The fuel management of the external fuel tank system(s) must be such that fuel in the external fuel tank system(s) is to be emptied prior to fuel in the main tanks.

Issued in Kansas City, Missouri on September 11, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–18342 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28649; Airspace Docket No. 07–ANM–10]

Proposed Establishment of Class E Airspace; Wheatland, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Wheatland, WY. Additional controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Phifer Airfield. The FAA is proposing this action to enhance the safety and management of aircraft operations at Phifer Airfield, Wheatland, WY.

DATES: Comments must be received on or before November 2, 2007.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room @12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone (202) 366–9826. You must identify FAA Docket No. FAA–2007–28649; Airspace Docket No. 07–ANM–10, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Western Service Area Office, System Support Group, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 917–6726.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2007–28649 and Airspace Docket No. 07–ANM–10) and be submitted in triplicate to Docket Operations (see

ADDRESSES section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2007–28649 and Airspace Docket No. 07–ANM–10''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Area, System Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Wheatland, WY. Additional controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) SIAP at Wheatland Phifer Airfield. This action would enhance the safety and management of aircraft operations at Phifer Airfield, Wheatland, WY.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed 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 proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 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 FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006 is amended as follows:

Paragraph 6005. Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WY E5 Wheatland, WY [New]

Wheatland, Phifer Airfield, WY
(Lat. 43°03 20 N., long. 104°55 43 W.)

That airspace extending upward from 700 feet above the surface within a 9-mile radius of Phifer Airfield, WY and within 4 miles north and 4 miles south of the Phifer Airfield, WY 080° radial extending from the 9-mile radius to 12.90 miles east of the Phifer Airfield, WY.

* * * * *

Issued in Seattle, Washington, on August 20, 2007.

Clark Desing,

Manager, System Support Group, Western Service Area.

[FR Doc. E7–18332 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–07–130]

RIN 1625–AA09

Drawbridge Operation Regulations; Gowanus Canal, Brooklyn, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the drawbridge operating regulations governing the operation of the Hamilton Avenue Bridge, mile 1.2, across the Gowanus Canal at Brooklyn, New York. This proposed rule would allow the bridge owner to require a four-hour notice for bridge openings from November 5, 2007 to January 15, 2009. This rule is necessary to facilitate rehabilitation construction at the bridge.

DATES: Comments and related material must reach the Coast Guard on or before October 18, 2007. The proposed amendment of 33 CFR 117.787 would be effective from November 5, 2007 to January 15, 2009.

ADDRESSES: You may mail comments and related material to Commander (dpb), First Coast Guard District Bridge Branch, One South Street, Battery Park Building, New York, New York, 10004, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except, Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, (212) 668–7195.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–07–130), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying. If you would like to know if they reached us, 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.

Public Meeting

We do not now plan to hold a public meeting; however, you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Hamilton Avenue Bridge has a vertical clearance of 19 feet at mean high water, and 23 feet at mean low water in the closed position. The existing drawbridge operating regulations listed at 33 CFR 117.5, require the bridge to open on signal at all times.

The bridge owner, New York City Department of Transportation (NYCDOT), has requested a temporary rule to facilitate structural, electrical and mechanical rehabilitation at the Hamilton Avenue Bridge.

Under this temporary rule the Hamilton Avenue Bridge would open on signal after at least a four-hour advance notice is given by calling (201) 400–5243.

Major rehabilitation bridge repairs have been ongoing at the Hamilton Avenue Bridge since March 2007. The bridge owner NYCDOT, requested a temporary deviation from the drawbridge operation regulations to help facilitate bridge rehabilitation repairs at the Hamilton Avenue Bridge.

As a result of that request the Coast Guard authorized a temporary deviation [CGD01–07–026] on March 15, 2007, which required mariners to provide a four-hour advance notice for bridge openings from April 6, 2007 through September 29, 2007.

On August 7, 2007, the Coast Guard received a second request from the bridge owner NYCDOT, to extend the four-hour advance notice requirement at the Hamilton Avenue Bridge through January 15, 2009, in order to facilitate the remaining rehabilitation bridge repairs.

Discussion of Proposed Rule

This proposed change would allow the bridge owner to require at least a four-hour advance notice for bridge openings from November 5, 2007 through January 15, 2009, in order to facilitate bridge rehabilitation repairs.

The Gowanus Canal supports both recreational and commercial navigation. The Coast Guard contacted all known facilities that normally use the Hamilton Avenue Bridge and no objections to the temporary rule were received.

The Coast Guard believes the proposed temporary rule is reasonable and necessary to allow the contractor to complete the bridge rehabilitation repairs at the bridge in order to assure the safe reliable continued operation of the bridge.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This conclusion is based on the fact that all vessel traffic will still be able to transit through the bridge at all times after providing the four-hour advance notice for bridge openings.

Small Entities

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

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

This conclusion is based on the fact that all vessel traffic will still be able to transit through the bridge at all times after providing the four-hour advance notice for bridge openings.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact, Commander (dpb), First Coast Guard District, Bridge Branch, One South Street, New York, NY, 10004. The telephone number is (212) 668–7165. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation as this action relates to the promulgation of operating regulations or procedures for drawbridges. Under figure 2–1, paragraph (32)(e) of the Instruction, an ''Environmental Analysis Checklist'' is not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

2. From November 5, 2007 to January 15, 2009, revise § 117.787 to read as follows:

§ 117.787 Gowanus Canal.

(a) The draws of the Ninth Street Bridge, mile 1.4, the Third Street Bridge, mile 1.8, the Carroll Street Bridge, mile 2.0, and the Union Street Bridge, mile 2.1, at Brooklyn, shall open on signal if at least a two-hour advance notice is given to the New York City Department of Transportation (NYCDOT), Radio Hotline, or the NYCDOT Bridge Operations Office.

(b) The draw of the Hamilton Avenue Bridge, mile 1.2, shall open on signal after at least a four-hour advance notice is given by calling (201) 400–5243. This paragraph is effective from November 7, 2007 to January 15, 2009.

Dated: September 7 2007.

Timothy S. Sullivan,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. E7–18302 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 89, and 1039

[EPA–HQ–OAR–2007–0652; FRL–8467–1]

RIN 2060–AO37

Nonroad Diesel Technical Amendments and Tier 3 Technical Relief Provision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this proposed rulemaking, EPA is making certain technical corrections to the rules establishing emission standards for nonroad diesel engines. In addition, we are amending those rules to provide nonroad diesel equipment manufacturers with a production technical relief provision for Tier 3 equipment which is similar to the technical relief provision already available for Tier 4 equipment. Like the Tier 4 provisions, the new Tier 3 technical relief provision deals with a situation where an equipment manufacturer which is not vertically integrated with its engine supplier is

unable to complete redesign of the equipment within the time required by rule (here, the Tier 3 rule). To be eligible, the equipment manufacturer must show both that its inability to furnish a compliant equipment design is due to the engine supplier, and that the equipment manufacturer has exhausted other flexibilities already provided by the Tier 3 rule. Unlike the Tier 4 technical relief provision, however, the Tier 3 Technical flexibility will apply up to a maximum of an additional 50% of production beyond the original 80% provided by the Tier 3 production flexibility provision. In addition, each grant of Tier 3 technical relief is associated with the likelihood of earlier use of Tier 4 nonroad diesel engines. The rule thus provides that for each one percent of use of Tier 3 technical relief, some percentage of the automatic Tier 4 production flexibility for the same engine power category, and some percentage of potential Tier 4 technical relief, is no longer available. The percentage varies based on the type of engine for which Tier 3 technical relief is granted, the largest Tier 4 ''penalty'' being associated with use of the

DATES: Written comments must be received by October 18, 2007. Request for a public hearing must be received by October 3, 2007. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. If we receive a request for a public hearing, we will publish information related to the timing and location of the hearing and the timing of a new deadline for public comments.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0652, by one of the following methods:

- *Federal eRulemaking Portal: http:// http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Deliveries are only accepted during the Docket's normal hours of operation from 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, except on government holidays. If your Docket requires the submission of multiple copies, please insert the following here:

► Please include a total of copies.

► If the comment involves an ICR that will be submitted to OMB for review and approval under 5 CFR 1320.11, then you must also include the following language pursuant to 1320.11(a): ''In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.''

- *Hand Delivery:* EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, EPA West Building, 1301 Constitution Avenue, NW., Room: 3334, Mail Code 2822T, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation from 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, except on government holidays, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0652. 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* website is an ''anonymous access'' systems, 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.*

Public Hearing: If a public hearing is held, it will be held at 10 a.m. on October 18, 2007 at the EPA NVFEL Office Building, 2000 Traverwood Drive Ann Arbor, MI, or at an alternate site nearby. Persons interested in presenting oral testimony must contact Zuimdie Guerra, Environmental Protection Agency, Office of Transportation and Air Quality, Assessment and Standards Division, 2000 Traverwood Drive Ann Arbor, MI 48105; e-mail *guerra.zuimdie@epa.gov*; telephone (734) 214–4387; fax number (734) 214–4050, no later than October 15, 2007.

Persons interested in attending the public hearing must also call Zuimdie Guerra to verify the time, date, and location of the hearing. If no one contacts Zuimdie Guerra by October 15, 2007 with a request to present oral testimony at the hearing, the hearing will be cancel.

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 EPA Docket Center (EPA/DC), Air Docket, Public Reading Room, Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 566–1742 and by facsimile at (202) 566–9744. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Zuimdie Guerra, Environmental Protection Agency, Office of Transportation and Air Quality, Assessment and Standards Division, 2000 Traverwood Drive Ann Arbor, MI 48105; e-mail address *guerra.zuimdie@epa.gov*; telephone (734) 214–4387; fax number (734) 214–4050.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Background

In the ''Rules and Regulations'' section of this **Federal Register**, we are making these revisions as a direct final rule without prior proposal because we view these revisions as noncontroversial and anticipate no adverse comment.

We have explained our reasons for these revisions in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment on the rule, or on one or more distinct actions in the rule, we will withdraw the direct final rule, or the portions of the rule receiving adverse comment. 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.

B. Does This Action Apply to Me?

This action will affect companies that manufacture and certify nonroad equipment powered by diesel engines in the United States.

Category	NAICS code [a]	Examples of potentially affected entities
U.S. Industry	333111	Farm Machinery and Equipment Manufacturing.
U.S. Industry	333112	Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing.
U.S. Industry	333131	Mining Machinery and Equipment Manufacturing.
U.S. Industry	333132	Oil and Gas Field Machinery and Equipment Manufacturing.
Industry	33341	Ventilation, Heating, Air-Conditioning, and Commercial Refrigeration Equipment Manufacturing.
Industry	33361	Engine, Turbine, and Power Transmission Equipment Manufacturing.
U.S. Industry	333911	Pump and Pumping Equipment Manufacturing.
U.S. Industry	333912	Air and Gas Compressor Manufacturing.
Industry	33392	Material Handling Equipment Manufacturing.
U.S. Industry	333924	Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturing.
U.S. Industry	333991	Power-Driven Handtool Manufacturing.
U.S. Industry	333992	Welding and Soldering Equipment Manufacturing.

[a] North American Industry Classification System (NAICS).

To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action as noted in **FOR FURTHER INFORMATION CONTACT**.

C. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://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:

i. Identify the rulemaking by docket 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.

D. How Can I Get Copies of This Document and Send Comments?

See the direct final rule EPA has published in the ''Rules and Regulations'' section of today's **Federal Register** for information about accessing these documents. The direct final rule also includes detailed instructions for sending comments to EPA.

II. Summary of Rule

A. EPA is making the following technical amendments to correct a variety of regulatory provisions in the regulations establishing emission standards for nonroad diesel engines:

- *40 CFR 9.1:* Adding the approved information collection for nonroad diesel engines to the summary table in 40 CFR part 9.
- *40 CFR 89.1:* Correcting a typographical error.
- *40 CFR 89.101:* Adding a provision to allow manufacturers to start using the provisions already adopted for Tier 4 engines in the time that Tier 2 or Tier 3 standards continue to apply. We would allow this only to the extent that it does not affect our ability to ensure that manufacturers fully comply with applicable requirements.
- *40 CFR 89.102:* Clarifying the legal status for equipment using engines exempted from current standards under the Transition Program for Equipment Manufacturers. The original language does not clearly exempt the equipment from the otherwise applicable prohibition in § 89.1003, which would be necessary for this whole program.
- *40 CFR 89.102:* Clarifying the limitation of allowances based on engine families. Since these engines are not certified, we clarify that this term relates to the characteristics described for certifying engines in § 89.116.
- *40 CFR 89.102:* Technical relief provision; discussion below in part B.
- *40 CFR 89.108:* Adding a provision for engines to be adjusted outside the normal range of parameter adjustment for applications involving landfill or wellhead gas. We have already adopted this in 40 CFR part 1039 for Tier 4 engines, so this change simply allows manufacturers to implement this provision earlier.
- *40 CFR 89.115:* Requiring manufacturers to name an agent for service in the United States. This simply allows us to ensure that we will have a person in the United States who is able to speak for the company and receive communication regarding any aspect of

our effort to certify engines and oversee compliance of certified products.

• *40 CFR 89.205:* Clarifying provisions in the nonroad diesel engine averaging, banking, and trading (ABT) program. The text change is to clarify that these credits are considered to be Tier 2 credits.

• *40 CFR 89.601:* Requiring importers to complete the EPA declaration form before importing engines, and to keep the forms for five years. This amendment simply restates the provisions that are already in place for the U.S. Customs and Border Patrol at 19 CFR 12.74.

• *40 CFR 89.611:* Defining the initial dates for implementing emission standards for nonroad diesel engines below 37 kW. This corrects an earlier oversight in the definition of the scope of the exemption for importing engines that were built before emission standards started to apply.

• *40 CFR 1039.102:* Clarifying provisions in the nonroad diesel engine averaging, banking, and trading (ABT) program.

• *40 CFR 1039.104:* Clarifying provisions in the nonroad diesel engine averaging, banking, and trading (ABT) program. The change corrects an inconsistency with the existing regulatory text that effectively prevents the use of credit-using Tier 3 engines in the initial years of Tier 4 in certain situations.

• *40 CFR 1039.115:* Specifying that crankcase requirements apply throughout an engine's useful life. Without this clarifying language, it is not clear how long this requirement applies, or whether it ever expires. We are also clarifying that the requirements of this section do not apply to engines that are subject to part 1039 requirements, but have been exempted from the emission standards for any reason.

• *40 CFR 1039.125:* Correcting an inadvertant reference to nonroad equipment, which should refer instead to nonroad engines as is clear from the context.

• *40 CFR 1039.135:* Adding clarifying language to describe when an engine's emission control information label is so obscured as to require the equipment manufacturer to apply a separate duplicate label. To be consistent with all other programs for nonroad engines, we specify that a label that is visible during normal maintenance is not obscured. We are also adding a specification that manufacturers keep records of the engine families for which they send duplicate labels.

• *40 CFR 1039.205:* Requiring submission of emission results for each test mode if manufacturers conduct discrete-mode testing. This does not apply for ramped-modal testing. These measurements would be submitted for demonstrating compliance with not-to-exceed standards, so this should not include any additional testing or reporting burden.

• *40 CFR 1039.205:* Requiring manufacturers to name an agent for service in the United States, as described above for § 89.115.

• *40 CFR 1039.205:* Requiring that manufacturers make good-faith estimates of projected production volumes.

• *40 CFR 1039.210:* Clarifying EPA's role in preliminary approvals to describe that we generally would not reverse a decision without new information supporting a different decision.

• *40 CFR 1039.225:* Revising the language to avoid using the term "new nonroad engine," since that defined term is not appropriate for this section.

• *40 CFR 1039.235:* Clarifying that carryover of emission data is possible for engine families that have engine changes in a new model year, as long there are no changes that might affect emissions.

• *40 CFR 1039.245:* Removing a regulatory provision that was inadvertently included in two separate paragraphs.

• *40 CFR 1039.255:* Narrowing the scope of recordkeeping that would subject an engine manufacturer to an action that could result in the certificate of conformity being revoked or voided, consistent with the similar provisions in our other nonroad engine programs.

• *40 CFR 1039.501:* Clarifying the emission standards to which specific test procedures apply.

• *40 CFR 1039.505:* Clarifying that cycle statistics for discrete-mode testing should be based on a calculation for each mode rather than the sequence of modes.

• *40 CFR 1039.605 and 40 CFR 1039.610:* Amending the regulatory language to address a variety of legal and technical clarifications.

• *40 CFR 1039.625:* Amending the regulatory language to specify the proper engine power lower bound.

• *40 CFR 1039.705:* Amending the description for calculating emission credits to clarify the steps in making the calculation.

• *40 CFR 1039.730:* Revising the description of emission credit calculations to clarify that manufacturers need consider only those families that generate or use emission credits. The emission credit program described in this subpart for these engines is not based on fleet-average compliance.

• *40 CFR 1039.735:* Clarifying the recordkeeping provisions related to emission credits and adding a requirement to keep records as long as the banked credits are considered valid for demonstrating compliance with emission standards.

• *40 CFR 1039.801:* Correcting various definitions to be consistent with more recent rulemakings that used somewhat different wording.

• *40 CFR 1039.810:* Removing the incorporation by reference for the document that defines our rounding conventions, since we are already relying on the same reference established in 40 CFR part 1065.

• *40 CFR 1039.825:* Adding a new section to summarize the information collection requirements in part 1039.

B. This rulemaking also provides nonroad diesel equipment manufacturers that are not vertically integrated with engine suppliers with a production technical relief provision for Tier 3 equipment, modeled on the comparable provision for Tier 4 equipment found in 40 CFR section 1039.625 (m).

Only equipment manufacturers who do not make the engines used in the equipment for which technical relief is sought are eligible to apply for technical relief under this provision (since the engine production and equipment production segments of integrated entities would necessarily be in contact and therefore not experience the type of unexpected redesign changes which could warrant technical relief). This applies exclusively to equipment manufacturers as described in section 1039.626. Engine manufacturers and importers thus may not request this relief.

The Tier 4 nonroad diesel rule applies both to diesel engine manufacturers and to equipment manufacturers who install engines made by engine manufacturers. Equipment manufacturers are ultimately responsible for producing non-road applications which comply with the rule's standards by the rule's compliance date. However, there can be circumstances when equipment manufacturers, through no fault of their own, receive engines from their suppliers too late to meet compliance dates. Although the Tier 4 rule contains a number of equipment manufacturer flexibility provisions which apply automatically (i.e. without any showing of need or any requirement to obtain EPA approval), we were convinced that some additional flexibility was needed to cover circumstances where (a) an equipment manufacturer has exhausted its automatic flexibilities, and (b) it demonstrates to EPA that it cannot comply with the rule because, through no fault of its own, the engine manufacturer failed to deliver a compliant engine to the equipment manufacturer in sufficient time. The provision is also to be used only as a last resort, so an equipment manufacturer is eligible for relief under the provision only after it exhausts all other flexibility provisions and implementation options. This provision (which we call ''technical relief'' [1]) is explained in the Tier 4 nonroad preamble at 69 FR 3900739–008 (June 29, 2004), and (as noted) is codified at section 1039.625 (m).

The same issue can arise for producers of Tier 3 nonroad diesel equipment, but the Tier 3 rule does not contain the technical relief provision. This rule essentially adds the same technical relief provision to the Tier 3 rule, for the same reasons EPA adopted it in Tier 4.

Tier 3 equipment manufacturers may need this technical relief to address challenges that may occur as engine manufacturers choose to implement technical changes for Tier 3. If an engine manufacturer changes their plan late in the design implementation process, an equipment company with unique or complicated equipment designs could face challenges with their internal redesign process. If the equipment manufacturer has already used its other flexibilities, there thus may still be circumstances warranting technical relief for Tier 3 equipment.

There are two principal differences between the Tier 3 technical relief provision, and the existing provision in Tier 4. The first is that the dirtier the substitute engine used if technical relief is granted for Tier 3 equipment, the more Tier 4 flexibilities (both automatically available flexibilities and potential technical relief) the equipment manufacturer must give up (further details are explained below). This encourages earlier use of Tier 4 engines (the cleanest), and ensures that the net emission reductions from Tier 3 and Tier 4 engines remain the greatest achievable, as required by section 213 of the Act. Another difference between the Tier 3 and Tier 4 technical relief provisions is that for the Tier 3 program, relief is limited to 50% of one year's production volume for each power category (as opposed to 70% under Tier 4). This allows for the transitional nature of this program to be realized, while limiting the potential for abuse beyond the need to facilitate a transition to cleaner engines.

However, for the most part, the Tier 3 technical provision mirrors that in Tier 4. As with the parallel provision in Tier 4, this technical relief provision provides a case-by-case exemption granted by EPA to an equipment manufacturer after evaluating the equipment manufacturer's application. Any engine produced utilizing this relief must be appropriately labeled to avoid the introduction into commerce of engines that are not in compliance. A clearly visible label thus must be provided which indicates the regulatory flexibility under which these engines are being produced. The provision applies to equipment that would otherwise be required to use engines certified to the Tier 3 standard (i.e. model year 2006 to 2008 equipment with 37 to 560 kW nonroad diesel engines). The equipment manufacturer would have the burden of demonstrating existence of an extreme technical or engineering hardship condition that is outside its control, i.e. is essentially due to conduct of the (nonintegrated) engine supplier and therefore out of the equipment manufacturer's control. The equipment manufacturer must also demonstrate that it has exercised reasonable due diligence to try to avoid being in the situation.

In order to meet these criteria, the equipment manufacturer needs to provide to EPA documentation, or a written explanation, addressing the following issues:

- Documentation of the technical or engineering problem that was unsolvable within the lead time provided by the Tier 3 rule.
- A description of the normal design cycle between the engine manufacturer and the equipment manufacturer and why that process did not work in this instance.
- All information (such as written specifications, performance data, prototype engines) received by the equipment manufacturer from the engine manufacturer.
- Comparison of the design process for the equipment model for which the exemption is requested versus those for which the exemption is not needed.
- A description of efforts the equipment maker has made to find other compliant engines for the model.
- Documentation that existing flexibilities will be fully utilized before the need for technical relief.

EPA would then decide on a case by case basis what percentage, if any, of additional relief (i.e. relief above and beyond that afforded by the automatic percent of production flexibility) would be provided.

Applicability of the Tier 3 technical relief provision is restricted to:

- Up to a maximum of an additional 50% beyond original 80% automatic per cent of production technical flexibility (a change from Tier 4, as noted above).
- Full allowance is limited to the first two (2) years of Tier 3.
- Phased-in by power category.
- The Tier 3 automatic flexibility provisions continue to apply for their original seven years or until fully consumed.
- Applies to 56 to 560 kW categories only for the percent of production and only available between 37 to 75 kW for the small volume.

A significant feature of this Tier 3 technical relief provision, which has no counterpart in the Tier 4 provision, is that for every 1% of the equipment production using this relief provision in the Tier 3 timeframe (i.e. equipment that uses engines not conforming to the Tier 3 standard in the Tier 3 timeframe), a percentage of the (automatic) production equipment flexibility allowance for Tier 4 is sacrificed from the comparable Tier 4 power category (i.e. this per cent of the otherwise automatic flexibility is no longer available), and an additional 1% is sacrificed from any potential Tier 4 technical relief that the Agency may grant for that power category. Please see Table 1. In other words, to utilize the Tier 3 technical relief, the equipment manufacturer must give up some amount of its otherwise automatic Tier 4 flexibility and some portion of its potential Tier 4 technical relief. The Tier 4 percent of production sacrifice is based on the percentage of earlier Tier (e.g. Tier 1 or 2) engines utilized in place of Tier 3 engines. Grant of Tier 3 technical relief thus would be linked to earlier use of Tier 4 engines.

[1] The Tier 4 rule uses the phrase 'technical or engineering hardship' to describe this provision, and today's rule uses that same language.

TABLE 1.—TECHNICAL RELIEF USAGE

[In percent]

Use of percent of production allowances by equipment manufacturer during implementation of Tier 2 program	Offsetting deductions required for use of one percent of Tier 3 technical relief	
	Tier 4 percent of production allowance	Tier 4 technical relief
0–20	0	1
20–40	1	1
40–60	2	1
60–80	3	1

For example, if you used 45 percent of your production flexibility for equipment using Tier 2 engines of a given power category (i.e. if in the Tier 2 timeframe you used 45% of the total 80% percent of production flexibility for that power category), you must forfeit 2 percent of the (automatic) production flexibility for Tier 4 engines of that power category for every 1 percent technical relief EPA grants for Tier 3 equipment using engines of that power category. You must also forfeit 1 percent of any potential technical relief which could be granted for Tier 4 engines (i.e. for equipment using Tier 4 engines) for every 1 percent technical relief exemption EPA grants for Tier 3 engines. If you use the Tier 3 technical relief allowances for 5 percent of your equipment for two years, you have used a total allowance of 10 percent. Therefore, as shown in Table 1, you must forfeit a total of 20 percent of production flexibility for Tier 4 engines plus 10 percent of any technical relief which could be granted for Tier 4 engines.

The technical relief will be further adjusted based on the sales volume by power category. Because the Tier 3 and Tier 4 rules have different power category ranges, today's rule specifies which power categories in Tier 4 correspond to those in Tier 3 for purposes of this rule. The Tier 3 power categories of 37kW to 75kW and 75kW to 130kW correspond to the Tier 4 power category of 56kW to 130kW. For the Tier 3 equipment in the 37 to 75kW category, you must only use the sales volume for equipment that uses engines with a rated power greater than 56kW. For example, if you have a Tier 3 piece of equipment that uses a 40 kW engine, the sales of the equipment are counted in the Tier 4 power category of 19kW to 56kW. If you have a Tier 3 piece of equipment that uses a 60kW engine, the sales of the equipment are counted in the Tier 4 power category of 56kW to 130kW. The Tier 3 power categories of 130kW to 225kW, 225kW to 450kW and 450kW to 560kW correspond to the Tier 4 power category of 130kW to 560kW. You will need to sum the sales of the Tier 3 power categories that correspond to the Tier 4 power category. Please see Table 2. If EPA grants technical relief, the sum of all the Tier 3 units that are so exempted are divided by the sum of all the Tier 3 units sold in the corresponding Tier 4 power category to determine the percentage of Tier 4 equipments affected.

TABLE 2.—POWER CATEGORIES

Tier 3 power category	Tier 4 power category
37kW to 75kW *	19kW to 56kW.
37kW to 75kW **, 75kW to 130kW.	56kW to 130kW.
130kW to 225kW, 225kW to 450kW, 450kW to 560kW..	130kW to 560kW

* Applies only to use of engines rated between 37kW and 56kW by small volume equipment manufacturers.

** Includes only equipment that uses engines with a rated power greater than 56kW.

For example, if you produce 50 units using Tier 3 technical relief in the range of 130kW to 225kW, and you produce 50 units using Tier 3 technical relief in the range of 225 to 450kW, and no units are produced in the 450kW to 560kW range, and your overall sales volume for the power ranges of 130kW to 560kW in Tier 3 is 400 units, the amount of Tier 3 technical relief used is 100/400 or 25 percent. Because you forfeit 1 percent of your Tier 4 technical relief for every 1 percent of Tier 3 technical relief used (see Table 1 above), then you will lose 25 percent of your (potential) Tier 4 technical relief in the 130kW to 560kW power range category. If you used 45 percent of your production flexibility for Tier 2 engines, you must forfeit 2 percent of production flexibility for Tier 4 engines for every 1 percent of Tier 3 technical relief. Therefore, you will forfeit 50 percent of your Tier 4 production allowance in the 130kW to 560kW power range category.

Because the technical relief provision was not originally included in the Tier 3 program, we believe it is important to maintain the emission benefits of the Tier 3 rule by requiring a consistent emission trade-off with Tier 4. EPA has already found that the greatest emissions reduction achievable industry-wide for Tier 3 and Tier 4 do not include Tier 3 technical relief plus all of the other Tier 3 and Tier 4 flexibilities. The requirement that certain otherwise-available Tier 4 flexibilities be foregone is designed to ensure protection of the environment, prevent abuse, and encourage earlier introduction of Tier 4 technology. Most basically, as noted above, the linkage is designed to assure that the Tier 3 and Tier 4 rules, in combination, continue to result in the greatest emissions reduction achievable industry-wide, as required by section 213(a) of the Act.

The technical relief for small volume equipment manufacturers is similar to the equipment manufacturer technical relief with the distinction that it applies to small volume equipment manufacturers. The following criteria for small volume apply:

- 100 unit cap.
- Small volume technical relief is only available to the 37 to 56 kW range and the 56 to 75 kW range.

III. 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 (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Agency believes this action does not impose information collection burden because this rulemaking only provides a production technical relief provision for nonroad equipment manufactures.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

Today's proposed rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. Although the rule is subject to the APA, the Agency has invoked the ''good cause'' exemption under 5 U.S.C. 553(b), therefore it is not subject to the notice and comment requirement.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's final rule contains no Federal mandates for State, local, or Tribal governments or the private sector. The rule imposes no new expenditure or enforceable duty on any State, local or Tribal governments or the private sector, and EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rulemaking affects only nonroad equipment manufacturers providing them a production technical relief provision. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. This rulemaking affects only nonroad equipment manufacturers providing them a production technical relief provision. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, Section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant, and does not involve decisions on environmental health or safety risks that may disproportionately affect 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 and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus 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 proposed rule will 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. The technical amendments on this rule do not relax the control measures on sources regulated by the rule and therefore will not cause emissions increases from these sources. The technical relief for the Tier 3 timeframe seeks to compensate for any emissions impact by encouraging earlier use of Tier 4 engines requiring the equipment manufacturer to give up specific Tier 4 flexibilities.

K. Statutory Authority

The statutory authority for this action comes from section 202 of the Clean Air Act as amended (42 U.S.C. 7521). This action is a rulemaking subject to the provisions of Clean Air Act section 307(d). See 42 U.S.C. 7607(d).

List of Subjects

40 CFR Part 9

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Vessels, Warranties.

40 CFR Part 89

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Vessels, Warranties.

40 CFR Part 1039

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated: September 6, 2007.

Stephen L. Johnson,

Administrator.

[FR Doc. E7–18163 Filed 9–17–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-month Finding on a Petition To List *Sclerocactus brevispinus* (Pariette cactus) as an Endangered or Threatened Species; Taxonomic Change From *Sclerocactus glaucus* to *Sclerocactus brevispinus, S. glaucus*, and *S. wetlandicus*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding and proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list *Sclerocactus brevispinus* (Pariette cactus) as an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). We also propose to change the taxonomy of the currently threatened *Sclerocactus glaucus* ''complex'' to three distinct species: *Sclerocactus brevispinus*, *S. glaucus*, and *S. wetlandicus.* Because these species make up what was formerly the ''complex'', each will maintain its status of being listed as threatened.

After review of all available scientific and commercial information, we find that reclassifying *S. brevispinus* as endangered is warranted but precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. However, *S. brevispinus* is currently listed as threatened as part of the *S. glaucus* (Uinta Basin hookless cactus) complex.

We further propose to revise the taxonomy of *S. glaucus* (Uinta Basin hookless cactus) (previously considered a ''complex''), which is currently listed as a threatened species. In accordance with the best available scientific information, we propose to recognize the three distinct species: *S. brevispinus*, *S. glaucus*, and *S. wetlandicus.* Because each of these three species constitute the *S. glaucus* complex, we consider all three species to be threatened under the Act. In addition, we propose common names for *S. glaucus* and *S. wetlandicus.*

DATES: The finding announced in this document was made on September 18, 2007. We will accept comments on the proposed taxonomic change from all interested parties until November 19, 2007.

ADDRESSES: *Comments on Proposed Taxonomic Change:* If you wish to comment on the proposed rule to revise the taxonomy of *S. glaucus*, you may submit your comments and materials by any one of several methods:

1. *By mail or hand-delivery to:* Larry England, Utah Field Office, U.S. Fish and Wildlife Service, 2369 W. Orton Circle, Suite 50, West Valley City, UT 84119.

2. *By electronic mail (e-mail) to: fw6_sclerocactus@fws.gov*. Please see the Public Comments Solicited section for other information about electronic filing.

3. *By fax to:* the attention of Larry England at 801–975–3331.

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

Supporting Documents for 12-Month Finding: Supporting documents for this finding are available for public inspection, by appointment, during normal business hours at the Utah Field Office, U.S. Fish and Wildlife Service, 2369 W. Orton Circle, Suite 50, West Valley City, UT 84119. The petition finding, related **Federal Register** notices, the Court Order, and other pertinent information may be obtained on the Internet at *http://www.fws.gov/mountain-prairie/species/plants/Pariettecactus/.* We ask the public to submit any new data or information concerning the status of or threats to *Sclerocactus brevispinus* to us at the above address. This information will help us monitor and encourage the ongoing conservation of this species, and formulate a future proposed listing rule, should one be necessary.

FOR FURTHER INFORMATION CONTACT: Larry England, Utah Field Office (see **ADDRESSES**) (telephone 801–975–3330; facsimile at 801–975–3331). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

This document consists of: (1) A proposed rule to change the taxonomy of the currently threatened *Sclerocactus glaucus* ''complex'' to three distinct species: *Sclerocactus brevispinus*, *S. glaucus*, and *S. wetlandicus*, each of which will continue to be listed as threatened; and (2) a 12-month finding on a petition to list *Sclerocactus brevispinus* (Pariette cactus) as an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). For the sake of convenience, we present the proposed taxonomic change first, followed by the 12-month finding.

Proposed Rule for Taxonomic Change From *Sclerocactus glaucus* to *Sclerocactus brevispinus*, *S. glaucus*, and *S. wetlandicus*

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule. We particularly seek comments concerning *Sclerocactus* taxonomy, including any evaluations of the studies cited in this notice.

You may submit your comments and materials concerning this proposal by one of several methods (see **ADDRESSES**). If you use e-mail to submit your comments, please include ''Attn: Pariette Cactus'' in your e-mail subject header, preferably with your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your e-mail, contact us directly by calling our Utah Field Office at 801–975–3330. Please note that we must receive comments by the date specified in the **DATES** section in order to consider them in our final determination and that the e-mail address *fw6_sclerocactus@fws.gov* will be closed out at the termination of the public comment period.

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.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Utah Field Office, U.S. Fish and Wildlife Service, 2369 W. Orton Circle, Suite 50, West Valley City, UT 84119 (telephone 801–975–3330).

Taxonomic Classification

The original listing rule (44 FR 58868, October 11, 1979) included all hookless (straight central spines) *Sclerocactus* populations at the extreme periphery of the *Sclerocactus* genus' distribution in western Colorado and northeastern Utah, and referred to them as *Sclerocactus glaucus* per L. Benson (1966, pp. 50–57; 1982, pp. 728–729). This taxonomic classification is no longer supported by results of genetic and morphological research. The separation of *Sclerocactus glaucus* into three species (*S. glaucus, S. wetlandicus*, and *S. brevispinus*) is reinforced by recent genetic studies (Porter *et al.* 2000, pp. 14, 16; Porter *et al.* 2006, pp. 6, 7, 10), common garden experiments (Hochstatter 1993, pp. 94, 98; Welsh *et al.* 2003, p. 79), and a reevaluation of morphological characteristics (Heil and Porter 2004, pp. 200–201; Hochstatter 1993b, pp. 93, 97, 99).

Revisions to the taxonomy of *S. glaucus* began in 1989 (Hochstatter 1989 in 1993, pp. 91–92; Heil and Porter 1994, pp. 25–27; Porter *et al.* 2000, pp. 8–23; Welsh *et al.* 2003, p. 79). By 2004, the *Flora of North America* recognized the plant *S. glaucus* (that we listed in 1979) as three distinct species: *S. glaucus* (Uinta Basin hookless cactus), *S. wetlandicus* (no common name), and *S. brevispinus* (Pariette cactus). Thus, we now consider the Uinta Basin hookless cactus ''complex'' to be comprised of three distinct species: *S. glaucus*, *S. wetlandicus*, and *S. brevispinus*, and we propose to amend the List of Endangered and Threatened Plants at 50 CFR 17.12(h) to reflect this revision to taxonomy.

Sclerocactus glaucus is endemic to western Colorado. Its common name, Uinta Basin hookless cactus, refers to a geological area in Utah. Therefore, the common name of Uinta Basin hookless cactus is a misnomer that would be more accurately applied to *S. wetlandicus*, which currently has no common name. We believe that ''Colorado hookless cactus'' is a more appropriate common name for *S. glaucus*, and we propose to adopt that common name.

Sclerocactus wetlandicus (no common name) was first described in 1989 (Hochstatter 1989 in 1993, pp. 91–92), and comprises the bulk of the previously termed Uinta Basin hookless cactus complex in Utah (in the Uinta Basin proper). It is considered a separate population. As described above, we believe that the common name ''Uinta Basin hookless cactus'' is more appropriate for this species, and propose to adopt that common name.

Sclerocactus brevispinus (Pariette cactus) is a morphologically unique *Sclerocactus* population occurring only in the Pariette Draw in the central Uinta Basin in Utah. This cactus is much smaller than either *S. wetlandicus* or *S. glaucus*, and retains the vegetative characteristics of juvenile *S. wetlandicus* individuals in adult flowering plants. At the time of the species listing in 1979, these smaller-statured individuals were thought to represent an ecotypic variation of *S. glaucus*. This unique cactus from Pariette Draw has been variously named *S. wetlandicus* var. ilseae (Hochstatter 1993, pp. 95–97), *S. brevispinus* (Heil and Porter 1994, p. 26), and *S. whipplei* var. *ilseae* (Welsh *et al.* 2003, p. 79). We propose to adopt the taxonomic change accepted by the *Flora of North America* (Heil and Porter 2004, pp. 197–207) as *S. brevispinus*, and propose to adopt the common name ''Pariette cactus'' for this species.

In summary, in the Proposed Regulation Promulgation section of this document, we propose the taxonomic change from *Sclerocactus glaucus* to *Sclerocactus brevispinus* (Pariette cactus), *Sclerocactus glaucus* (Colorado hookless cactus), and *Sclerocactus wetlandicus* (Uinta Basin hookless cactus).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), and based on our implementation of the Office of Management and Budget's Final Information Quality Bulletin for Peer Review, dated December 16, 2004, we are to seek the expert opinions of appropriate and independent specialists regarding the science in proposed rules. Since the basis for this proposed taxonomic change has appeared in peer-reviewed journals, it is not necessary to seek additional peer review of this proposed rule.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Since this proposed rule is simply a taxonomic change, this rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis.

12-Month Finding on a Petition To List *Sclerocactus brevispinus* (Pariette cactus) as Endangered or Threatened

Section 4(b)(3)(B) of the Act requires that, for any petition that contains substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of our receipt of the petition on whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether any species is threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants. Such 12-month findings are to be published promptly in the **Federal Register**. Section 4(b)(3)(C) of the Act requires that a petition for which the requested action is found to be warranted but precluded be treated as though resubmitted on the date of such finding, and requiring a subsequent finding to be made within 12 months.

Previous Federal Actions

On October 11, 1979, we published a final rule listing *Sclerocactus glaucus* (Uinta Basin hookless cactus) as threatened (44 FR 58868). On April 25, 2005, we received a petition, dated April 18, 2005, from the Center for Native Ecosystems and the Utah Native Plant Society, requesting that we: (1) List *Sclerocactus brevispinus* (Pariette cactus) as an endangered or threatened species under the provisions of section 4 of the Act (independent of its current listing as threatened as part of *S. glaucus*); (2) promulgate an emergency listing rule; and (3) designate critical habitat concurrent with the listing. On October 10, 2005, the petitioners entered a complaint in the U.S. District Court of Colorado seeking to compel us to list *S. brevispinus* as either threatened or endangered. Per an October 11, 2006, court-ordered settlement agreement, we agreed to publish a 90-day petition finding in the **Federal Register** on or before December 8, 2006.

On December 14, 2006, we published a 90-day finding on this petition (71 FR 75215) in which we concluded that emergency listing was not necessary, but that the petition provided substantial information indicating that listing *S. brevispinus* as endangered or threatened may be warranted, and we initiated a status review. Please refer to that finding for greater detail concerning the listing history of *Sclerocactus glaucus* (Uinta Basin hookless cactus).

This notice constitutes the 12-month finding on the April 25, 2005, petition to list *Sclerocactus brevispinus* (Pariette cactus) as an endangered or threatened species.

Species Description

Cacti species of the Uinta Basin hookless cactus complex are described in the 90-day petition finding for *Sclerocactus brevispinus* (71 FR 75215, December 14, 2006). Descriptions were adapted from Heil and Porter 1994 (pp. 25–27), and Hochstatter 1993 (pp. 91, 95, and 99).

Biology and Distribution

Sclerocactus brevispinus habitat is a sparsely vegetated desert shrubland dominated by *Atriplex*, *Chrysothamnus*, and *Tetradymia* species (USFWS 1990, p. 7). The species' life history is poorly known, but it is thought to be a long-lived perennial usually flowering after 3 or 4 years. A broad assemblage of native bees, and possibly other insects including ants and beetles, pollinates *S. brevispinus* (USFWS 1990, p. 7).

Sclerocactus brevispinus grows on fine soils in clay badlands derived from the Uinta formation (USFWS 1990, p. 7). The species is restricted to one population in an area about 16 kilometers (km) (10 miles (mi)) long by 8 km (5 mi) wide astride the Duchesne-Uintah County boundary on Bureau of Land Management (BLM), Ute Tribe, State of Utah, and private land. We estimate the total species population to be about 8,000 individuals on approximately 7,200 hectares (ha) (18,000 acres (ac)), distributed largely across BLM and Ute Tribal lands.

We do not have recent, long-term status or trend population data for *Sclerocactus brevispinus.*

A 1985 species inventory documented a population of 3,795 individuals on approximately 6,000 ha (15,000 ac) of BLM land, and minor amounts of State and private lands (BLM 1985, p. 4; Heil and Porter 1994, p. 45). BLM estimated that this population represented 75 percent of the species population on BLM-managed lands (Sinclear 1985). Based on this information, we consider the *Sclerocactus brevispinus* population on BLM lands to be comprised of approximately 5,000 individuals. BLM conducted an inventory in 2007, but its final data are not yet available. We estimate the total area of potential habitat for *S. brevispinus* on BLM lands to be approximately 6,000 ha (15,000 ac).

The total population of *Sclerocactus brevispinus* on the Uintah and Ouray Reservation of the Ute Tribe, directly north and adjacent to BLM lands, is unknown. The Ute Tribe conducted an inventory in 2007, and preliminary results indicate an estimated 3,000 individuals (O'Hearn 2007). However, the Tribe's final data are not yet available. We estimate the total area of potential habitat for *S. brevispinus* on Ute Tribal lands, based on exposures of the Wagon Hound member of the Uinta formation with desert shrub vegetation, to be about 1,200 ha (3,000 ac).

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations at 50 CFR part 424, set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. In making this finding, we summarize below information regarding the status and threats to *Sclerocactus brevispinus* in relation to the five factors provided in section 4(a)(1) of the Act.

In making this 12-month finding, we considered all scientific and commercial information received or acquired between the time of the initial petition (April 2005) and the end of the public comment period (February 12, 2007), and additional scientific information from ongoing species surveys and studies as they became available. During the public comment period (71 FR 75215, December 14, 2006), we received four comments and information on *Sclerocactus brevispinus* and the other two species in the Uinta Basin hookless cactus complex from private citizens, organizations, and other entities.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The total range of *Sclerocactus brevispinus* comprises approximately 7,200 ha (18,000 ac) (USFWS 2006, p. 2; Childs 2007, p. 5), within which suitable habitat is scattered in naturally occurring mosaics (BLM 2005b, p. 3–30). The population is comprised of irregularly distributed occurrences across the landscape. Its entire known range occurs within active and pending oil and gas fields.

Oil and Gas Development

Seventy-two percent of the total range of the species (5,209 ha /12,865 ac) occurs within the approved Castle Peak/Eightmile Flat Oil and Gas Expansion Project (5,012 ha/12,530 ac) and the pending Gasco Uinta Basin Natural Gas Field Development Project (134 ha/335 ac) on BLM lands (USFWS 2006, p. 3). Current well-field development in these project areas has resulted in direct and indirect effects to 765 ha (1,891 ac) of *Sclerocactus brevispinus* habitat (BLM 2005b, p. 4.1–26). BLM proposes to double the number of wells and the amount of surface disturbance in cactus habitat (BLM 2005b, p. 4.2–14). An additional 848 ha (2,095 ac) of *S. brevispinus*' range (12 percent) contains wells drilled in the Sand Wash and Greater Boundary Oil and Gas Field adjacent to the Castle Peak/Eightmile Flat Project (USFWS 2006, p. 7). In summary, 100 percent of *S. brevispinus*' range on BLM land (84 percent of the species' total range) is included within oil and gas development project boundaries.

In addition, the Ute Tribe has leased occupied *S. brevispinus* habitat north of and directly adjacent to the Castle Peak/Eightmile Flat Project for oil and gas development. Nine wells, affecting 215 *S. brevispinus* individuals, are scheduled for drilling in 2007 (Childs 2007, p. 6). The biological assessment for this project indicates that, including 12.7 km (7.9 mi) of new road, 15.6 ha (39 ac) of habitat would be disturbed, and 3.3 ha (8.2 ac) of occupied habitat would be lost (Childs 2007, p. 1). The project boundary will include 100 percent of *S. brevispinus*' range on Ute Tribal land (16 percent of the species' total range).

In its Castle Peak/Eightmile Flat Oil and Gas Expansion Project Final Environmental Impact Statement (FEIS), BLM also identifies indirect effects to *Sclerocactus brevispinus* from the Castle Peak/Eightmile Flat Project, including soil compaction, increased road access, increased off-road vehicle (ORV) use, increased surface disturbance, and habitat fragmentation (BLM 2005b, pp. 4.1–26, 4.2–22, 4.3–14, 5–18). In this same FEIS, BLM established a range of influence for indirect effects from roads and well pads (such as fugitive dust, erosion, and impacts to pollinators) of 300 meters (m) (984 feet (ft)). Using this range of influence, BLM calculated that approximately 5,297 ha (13,090 ac) (73 percent) of *S. brevispinus'* range within and immediately adjacent to the Castle Peak/Eightmile Flat Project area would be impacted by indirect effects (BLM 2005b, p. 5–28). Increases in well-field facilities within cactus habitat will result in some cactus populations becoming more physically isolated from each other (BLM 2005b, p. 5–27).

BLM has identified 261 mi (420 km) of new and existing access roads, with adjacent parallel utility corridors for buried water pipelines, and above ground natural gas gathering pipelines, in connection with the Castle Peak/Eightmile Flat Project (BLM 2005b, ROD p. 4). Development of roads in support of oil and gas development can result in increased erosion, soil compaction, and sedimentation. Roads can cause cactus mortality in areas of high sediment movement and deposition (BLM 2005b, p. 4.1–28). Mortality of mature cactus plants, including S. *brevispinus*, has been observed when erosion of road sediments bury the plants (BLM 2005b, p. 4.1–28). Cacti seeds have been buried and lost due to erosion runoff from well-field facilities (BLM 2005b, p. 4.1–28). In addition, dust particles increase leaf temperature and reduce photosynthesis in cacti (Farmer 1993, pp. 63–75; Sharifi *et al.* 1997, p. 842); the latter may be due to reduced leaf areas and greater leaf specific masses with corresponding decreased water use efficiency and reduced photosynthesis (Sharifi *et al.* 1997, p. 843). Construction and operation of roads and well pads increase dust occurrence substantially (BLM 2005b, pp. 2–4, 2–5, 4.1–8).

Increased road access results in direct loss of individual plants due to increased illegal collection of the species (BLM 2005b, p. 5–18; USFWS 1990, p .9). Illegal collection is a continuing and an ongoing threat to *Sclerocactus brevispinus* (see discussion under Factor B below).

Increases in ORV use result from access provided by increased road densities connected with well-field development. Developed roads provide access to vehicles that carry ORVs into areas that are otherwise not accessible, allowing for off-loading of ORVs and off-road access within a much wider range of unroaded habitat. ORV use results in crushing of cacti, and increased erosion, soil compaction, and sedimentation (BLM 2005a, pp. 4–246, 4–265 to 4–271; USFWS 1990, pp. 8, 10).

Increased surface disturbance from wells, pipelines, and roads facilitates the proliferation of noxious weeds (BLM 2005b, p. 4.1–9 to 4.1–11, 5–18). Noxious weeds alter the ecological characteristics of hookless cactus habitat, making it less suitable (USFWS 1990, pp. 9, 11; BLM 2005a, p. 3–112). Within the range of *Sclerocactus brevispinus*, a comparison of habitat on BLM land with habitat on adjacent Ute Tribal land shows that habitat on Tribal lands, which is less heavily grazed and lacks oil and gas developments, has fewer noxious weeds (O'Hearn 2007; England 2007).

The combined effects of roads (including increased erosion, soil compaction, and sedimentation; overall access; ORV use; illegal cacti collection; and spread of noxious weeds) result in direct mortality of cacti and habitat fragmentation (BLM 2005b, pp. 4.1–26, 4.2–22, 4.3–14, 5–27), which decreases the ability of *Sclerocactus brevispinus* to reproduce, maintain genetic viability, and persist as a species.

Rehabilitation of soils and vegetation following surface disturbance is expected to be difficult, because approximately 73 percent of soils in the Castle Peak/Eightmile Flat Project area have moderate to high revegetation constraints (BLM 2005a, p. 4.2–11). BLM estimates that successful revegetation would be expected to occur in desert shrub and sagebrush communities, but only over the long term (up to 50 years) (BLM 2005b, pp. 4.3–7, 4.2–12). Drought conditions could further extend the recovery period, and noxious weeds would persist regardless of control efforts (BLM 2005b, p. 4.3–7). Noxious weeds are difficult to eradicate and tend to out-compete native vegetation. Revegetation with native species is difficult due to the harsh environment of the lowest elevations of the Uinta Basin, which receive less than 15 centimeters (6 inches) of rainfall per year, and reach extreme hot and cold temperatures (BLM 2005a, p. 3–112; BLM 2005b, pp. 3.5–1, 3.5–5, 4.1–11; USFWS 1990, p. 11).

BLM has developed and implemented conservation measures to minimize the loss of individual cactus from oil and gas activities (BLM 2005a, pp. 1–14, 2–2, 2–29, 2–30; BLM 2005b; ROD pp. 5, 18–20). These measures include preconstruction cactus surveys and application of spatial avoidance buffers. BLM maintains the 4,664 ha (11,660 ac) Pariette Wetlands Area of Critical Environmental Concern (ACEC), which emphasizes protection of *Sclerocactus brevispinus* (BLM 1994, pp. 3–20 to 3–23). Approximately 31 percent of the ACEC (1,434 ha (3,584 ac)) is within the range of *S. brevispinus*. BLM defers approval of new wells and ancillary facilities located on BLM land within the Pariette Wetlands ACEC until a comprehensive population survey for *S. brevispinus* has been completed; however, conservation measures do not preclude development over the long term (BLM 2005b; ROD p. 5). Citing valid existing lease rights and current management prescriptions in the Diamond Mountain Resource Management Plan, BLM did not stipulate a blanket ''no surface occupancy'' requirement for oil and gas development within the Pariette Wetlands ACEC, or within the range of *S. brevispinus* (BLM 2005b; ROD p. 5). Following cactus surveys, the leasee will expand operations of the Castle Peak/Eightmile Flat Project into the ACEC.

In summary, despite its current listed status as threatened under the Act, *Sclerocactus brevispinus* and its habitat continue to be impacted by additional oil and gas development, including wells and supporting road and pipeline facilities. Losses of habitat and individual plants have occurred despite conservation efforts implemented by BLM and the oil field operator. Energy development is occurring in *S. brevispinus* habitat at a rate much greater than existed at the time of the original listing of *S. glaucus* in 1979. Due to the extent of current and pending energy development across the cactus' entire range, and the resulting direct and indirect effects to the species, *S. brevispinus* is in danger of extinction throughout its range or likely to become in danger of extinction in the foreseeable future.

Habitat Fragmentation

Regardless of conservation efforts related to oil and gas activities, adverse indirect effects are expected due to the loss and fragmentation of suitable habitat (BLM 2005a, pp. 4–240, 4–243, 4–244, 4–246, 4–252; BLM 2005b, pp. 3–35, 4.1–26, 4.2–22, 4.3–20, 5–27). A recent review of habitat fragmentation experiments concluded that fragmentation effects cascade through a plant community by modifying inter-specific interactions, exacerbating edge effects, and potentially affecting the genetic composition of local populations (Debinski and Holt 2002, p. 353). Low population numbers, combined with habitat fragmentation, pose a threat to rare plant species' ability to adapt genetically to changing environmental conditions (Lienert 2004, pp. 62, 63, 66; Matthies et al. 2004, pp. 481, 486).

BLM has initiated monitoring of *Sclerocactus brevispinus* populations, including monitoring of impacts associated with oil and gas development. Results are preliminary, because the study was initiated in 2005. However, initial results show potential effects of oil and gas development (*i.e.*, roads and well pads) on the survival and reproductive success of *S. brevispinus* (Ulloa 2006). For example, survival of *S. brevispinus* in plots within 100 m (328 ft) of roads associated with energy development was 17 percent, compared to 47 percent survival in plots farther than 100 m (328 ft) from a road. On plots within 100 m (328 ft) of roads, 13.8 percent of cacti reproduced, compared to 22 percent of cacti farther than 100 m (328 ft) from roads. More information is needed to determine if these effects are the result of energy development or other environmental factors (Ulloa 2006).

Direct *Sclerocactus brevispinus* mortality and habitat destruction have been caused by livestock trampling and ORV use (Utah Natural Heritage Program 2006, p. 3; BLM 2005a, pp. 4–231 to 4–235, 4–238; USFWS 1990, p. 11; England 2005; Sinclear 2005; Specht 2005). Recent observations show a significant decrease in *S. brevispinus* plant density on the more heavily grazed and roaded BLM lands in the Pariette Draw drainage than on adjacent Ute Tribal lands in the same drainage (O'Hearn 2007; England 2007). As previously mentioned, invasive weeds (*Bromus tectorum* (cheat grass) and *Halogeton glomeratus*) are much more prevalent on the more heavily grazed BLM lands at the boundary between the two land ownerships in the range of *S. brevispinus* (O'Hearn 2007; England 2007).

Conclusion for Factor A

Threats from existing and planned oil and gas development occur within the entire known range of *Sclerocactus brevispinus*. These threats include direct mortality, erosion, soil compaction, sedimentation, increased road access, ORV use, surface disturbance, and habitat fragmentation. In addition, these combined effects could decrease the reproductive rate of *S. brevispinus*. Rehabilitation of habitat areas following oil and gas projects is especially difficult due to the habitat conditions and climate of the desert plant community, and is expected to meet with limited success. The same is true for conservation measures implemented to minimize the loss of individual cacti due to oil and gas activities. Due to the magnitude and extent of the combined effects of ongoing and planned oil and gas development, we find that *S. brevispinus* is in danger of extinction throughout all of its range or likely to become in danger of extinction in the foreseeable future due to destruction, modification, and curtailment of its habitat and range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The original listing of *Sclerocactus glaucus* concluded that the cactus will continue to be prized among collectors and, therefore, is threatened by unregulated commercial trade (44 FR 58869, October 11, 1979). This remains true for *S. brevispinus*. Illegal collecting continues, is often documented, and negatively affects the species by fragmenting plant populations and reducing population sizes which can result in limiting reproduction (USFWS 1990, p. 9). BLM recognized that additional energy development and ensuing road development in the Castle Peak/Eightmile Flat Project would result in increased potential for illegal collecting (BLM 2005b, p. 4.1–26).

Approximately 56 percent of the known plant locations (40 percent of the species' range) are within 100 m (328 ft) of project-related roads or well pads in the project area (USFWS 2006, p. 4), and close proximity to a road facilitates this cactus' discovery by illegal collectors (Ulloa 2006).

In 2006, BLM documented that at least 60 *Sclerocactus brevispinus* plants were illegally collected, many from existing monitoring plots within the Castle Peak/Eight Mile Flat Project area (Ulloa 2006). Illegal collection areas were all within 100 m (382 ft) of roads associated with oil and gas development (Ulloa 2006). Additional plants were lost in 2007; however, the actual number of documented plant losses has not yet been determined.

Conclusion for Factor B

In conclusion, we have determined that illegal collection continues to be a threat to *Sclerocactus brevispinus* throughout all of its range. The magnitude of this threat is increasing due to development, and combined with other threats to the species, contributes to its likelihood of becoming extirpated. Collection alone, however, may not cause the species to become in danger of extinction throughout all of its range or likely to become in danger of extinction in the foreseeable future.

C. Disease or Predation

Parasitism by the cactus-borer beetle (*Moneilema semipunctatum*) is a significant source of mortality to all *Sclerocactus* species on the Colorado Plateau, especially in larger, mature, reproducing individuals (USFWS 1990, p. 11; Ulloa 2006; Sinclear 2005; Specht 2005). However, additional studies are needed in order to determine the long-term, population-level effects of the cactus borer beetle to *S. brevispinus*.

Conclusion for Factor C

Parasitism is identified as a threat to *Sclerocactus* species, however the significance to *S. brevispinus* is not currently known. Therefore, we can draw no conclusions about the contribution of this threat to the population status of the species.

D. Inadequacy of Existing Regulatory Mechanisms

BLM policy regarding federally listed species includes measures to implement management plans and programs that will conserve listed species and their habitats, and to comply with the Act (BLM 2001, pp. 5–6). However, complying with the Act requires incorporating measures that minimize adverse impacts to federally listed species within reasonable and prudent guidelines. This threshold does not eliminate adverse impacts, and the policy is implemented under BLM's broader mandate for land use planning and policy that requires technologically and economically feasible implementation of existing lease rights.

BLM's Diamond Mountain Resource Management Plan, approved in 1994, includes objectives and management prescriptions for the Pariette Wetlands ACEC (BLM 1994, pp. 3–20 to 3–23). The Pariette Wetlands ACEC provides protection for part of the Uinta Basin hookless cactus complex, which includes *S. brevispinus* and *S. wetlandicus*. The stated objective of the ACEC includes a goal to ''enhance and protect the wetlands community and associated habitat adjacent to Pariette and Castle Peak Washes * * * while meeting the management objectives of the final recovery plans for the special status species associated with the area'' (BLM 1994, p. 3–20). The Pariette Wetlands ACEC management prescriptions also state that BLM will authorize no action in suitable habitat for threatened and endangered species if it would jeopardize the continued existence of the species or result in severe modification of the habitat. However, much of the ACEC is leased for oil and gas exploration, development, and production. Of BLM's 4,664 ha (11,660 ac) in the Pariette Wetlands ACEC, about 8 ha (20 ac) are open with standard lease terms and conditions for leasable minerals; 3,152 ha (7,880 ac) are leased with stipulations; and 1,480 ha (3,700 ac) are leased with highly restricted measures, but do not include a ''no surface occupancy'' stipulation (BLM 1994, p. 3–21).

Conservation needs of *Sclerocactus brevispinus*, as part of the Uinta Basin hookless cactus complex, are addressed through interagency consultation (section 7 requirements) between the Service and BLM. BLM maintains *S. brevispinus* as a special status species, because it is not specifically included on the Federal List of Endangered and Threatened Plants. Currently, *S. brevispinus* is federally listed as threatened as part of the greater habitat range of the Uinta Basin hookless cactus complex. Therefore, BLM is required to consult on projects that affect *S. brevispinus*. The Service is required to provide reasonable and prudent measures to be included in projects that could adversely affect a listed species. The Castle Peak/Eightmile Flat Oil and Gas Expansion Project FEIS included conservation measures to specifically protect *S. brevispinus* and its habitat (BLM 2005b, pp. 4.1–26 to 28, 4.2–22, 4.3–14, 5–7, 5–18; ROD pp. 5, 18 to 20; Appendix B pp. 2, 27, 34, 39–41). For example, BLM and the leasee have agreed to a moratorium on new oil field developments within the Pariette Wetlands ACEC until a complete re-inventory of *S. brevispinus* is completed. The Pariette Wetlands ACEC contains approximately 1,249 ha (3,086 ac) (17 percent) of the known range of *S. brevispinus*. Approximately 75 percent of the inventory was completed during the species' flowering period in spring 2007. The remainder of the inventory is tentatively scheduled for completion in 2008 (Gerbig 2007).

Because of valid existing lease rights and management prescriptions, the Diamond Mountain Resource Management Plan Record of Decision did not stipulate a blanket ''no surface occupancy'' requirement for oil and gas development within the Pariette Wetlands ACEC (BLM 1994, p. 5). After cactus surveys are completed, the leasee will expand operations, subject to the Service's reasonable and prudent measures developed during the consultation process, of the Castle Peak/Eightmile Flat Project into the Pariette Wetlands ACEC.

BLM has recently established a population monitoring program for *Sclerocactus brevispinus* to track population changes, impacts from developments within the species' habitat, and direct threats such as grazing, parasitism, and unauthorized collection (Ulloa 2006), and 3 years of monitoring data have been collected. Initial results include documentation of illegal collection, and greater population declines nearer disturbances. Correlations of declines to specific threat factors, such as dust or soil compaction, have not yet been determined. Despite this monitoring, the extent of oil and gas development projects, and resulting documented direct and indirect impacts, throughout the range of *Sclerocactus brevispinus*, indicate that existing regulatory mechanisms are insufficient to conserve *the species.*

Despite implementation of conservation measures, *Sclerocactus brevispinus* is not adequately protected by the current designation (as part of the Uinta Basin hookless cactus complex) as threatened. Evaluation of impacts to *S. brevispinus* under section 7 of the Act is diluted by the fact that it is currently listed as part of the much larger distribution of the entire Uinta Basin hookless cactus complex. Therefore, actions included in determinations under section 7 of the Act are evaluated on whether they would jeopardize the continued existence of the larger listed entity rather than whether they would jeopardize the continued existence of *S. brevispinus*. *S. brevispinus*, in accordance with the best taxonomic information available, warrants evaluation of effects of proposed actions at a smaller scale, specific to it as a separate species. For example, if a project impacts 3,795 plants (last population count for *S. brevispinus* (BLM 1985, p. 4)) out of a total 10,000 plants (i.e., Uinta Basin hookless cactus complex as currently listed), it impacts 30 percent of the total population. However, if the same project occurs entirely within *S. brevispinus* habitat, it could theoretically directly or indirectly impact 100 percent of the total known population. The FEIS for the Castle Peak/Eightmile Flat Oil and Gas Expansion Project includes discussion of these concerns in its cumulative effects evaluation based in part on the overall population and distribution of the Uinta Basin hookless cactus complex (BLM 2005b, pp. 4.2–22, 5–18). The Service provided reasonable and prudent measures related to conserving *S. brevispinus*; however, these measures result in protecting individual plants, and tend to not limit the extent of drilling within the range of the species.

Oil and gas development has not yet been implemented on Ute Tribal land; however, the Tribe has leased occupied *S. brevispinus* habitat that will disturb 15.6 ha (39 ac) of habitat. These lands are not covered by regulations that apply to Federal lands; no protection under the Act is afforded plants on Tribal land.

Conclusion for Factor D

Despite BLM policy regarding federally listed species, existing oil and gas leases continue to directly and indirectly impact *Sclerocactus brevispinus* and its habitats. In addition, Tribal lands are not subject to regulations that restrict energy development, and are only subject to section 7 consultation for projects that have a Federal nexus, such as Federal grant money or Bureau of Indian Affairs involvement. Specifically, neither BLM nor the Tribe have regulations or policies that include ''no surface occupancy'' stipulations; this deficiency allows for the ongoing and planned expansion of energy developments that endanger the continued existence of *Sclerocactus brevispinus* and its habitat. The extent and magnitude of oil and gas-related threats demonstrate that existing regulatory mechanisms are not adequate to protect remaining occupied and essential *S. brevispinus* habitat. Therefore, we find *Sclerocactus brevispinus* to be in danger of extinction throughout all of its range or likely to become in danger of extinction in the foreseeable future due to the inadequacy of existing regulatory mechanisms.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Potential threats to *Sclerocactus brevispinus* from drought are well documented (USFWS 1990, p. 11; Specht 2005; Heil 2005). In addition to plant mortality due to lack of precipitation, drought causes streams to dry up, thereby removing additional moisture from the environment. In addition, noxious weeds are often able to out-compete native species under drought conditions. Many dead *S. brevispinus* individuals were observed in the Uinta Basin after the severe drought of 1976 to 1977 (USFWS 1990, p. 11). The specific effects of climate change on *S. brevispinus* are unknown, but climate changes that lead to longer or more frequent drought in the future could potentially affect the species.

Sclerocactus brevispinus exists in and adjacent to areas that receive pesticide treatments to remove undesirable species, such as noxious weeds and insect pests (USFWS 1990, pp. 10–11). Individual cactus are likely directly affected by use of herbicides, and indirectly by pesticides that affect pollinators (USFWS 1990, pp. 10–11). However, specifics of the species' pollination biology are currently unquantified.

The inherent vulnerability of *Sclerocactus brevispinus* due to its small population size is a concern (Ellestrand and Ellam 1993, p. 228). However, no information exists to indicate that the species' range and population numbers have been significantly larger than they are currently, except for recent documented losses due to oil and gas development and illegal collection. The species' small population size, in combination with habitat fragmentation and other threat factors discussed herein, may be affecting reproductive success.

Conclusion for Factor E

Although several other natural or manmade factors—including drought, herbicide and pesticide application, and small population size—may affect the continued existence of *Sclerocactus brevispinus,* we cannot conclude that any one of these factors alone currently puts the species in danger of extinction throughout all or a significant portion of its range, or makes it likely to become in danger of extinction in the foreseeable future.

Finding

We have carefully assessed the best scientific and commercial information available regarding threats to *Sclerocactus brevispinus* (Pariette cactus). We reviewed the petition, available published and unpublished scientific and commercial information, and information submitted to us during the public comment period following the publication of our 90-day petition finding. This 12-month finding reflects and incorporates information that we received during the public comment period or that we obtained through consultation, literature research, and field visits. On the basis of this review, we find that reclassifying *S. brevispinus* as endangered is warranted, due to threats associated with habitat loss and degradation due largely to energy development (Factor A), unauthorized collection (Factor B), and the inadequacy of existing regulatory mechanisms (Factor D). However, reclassifying *S. brevispinus* as endangered is precluded at this time by pending proposals for other species with higher listing priorities based on taxonomic uniqueness (i.e., the only species described for the genus), or other species that are not currently listed (see discussion under Preclusion and Expeditious Progress).

We have determined that the magnitude of threats affecting *Sclerocactus brevispinus* to be ''high,'' because there is a single population and 72 percent of its habitat is affected by oil and gas development. The species cannot tolerate the cumulative effects from existing and proposed energy projects, especially due to the extent of roads within *S. brevispinus* habitat. We have also determined that the immediacy of threats is ''imminent,'' because the species'' habitat is already being impacted by oil and gas developments, and the remaining area is currently being proposed for development. Therefore, we assign a listing priority number of 2 to this species.

Emergency Listing

We reviewed the available information to determine if existing and foreseeable threats to *Sclerocactus brevispinus* are of sufficient extent and magnitude to require emergency listing as threatened or endangered. We have determined that an emergency listing is not warranted for this species at this time, because it is currently treated as a threatened species as part of the *S. glaucus* (Uinta Basin hookless cactus) complex. It receives protection under the Act through sections 4, 7, and 9, which provide for recovery actions, and provide some protection from habitat disturbance through interagency consultation and from illegal collection and trade.

Critical Habitat

We considered the need to designate critical habitat for this species, and have found that designating critical habitat for commercially-exploited species, such as rare cacti, is not prudent. Designating critical habitat requires that we identify specific and narrowly delineated geographical areas containing populations, which would make the species more vulnerable to increased unauthorized and illegal collection. There is a long and clear record that *Sclerocactus brevispinus* is not only a highly desirable species for collectors, but that significant numbers have been collected illegally. Designating critical habitat for this species would exacerbate this ongoing threat. Therefore, in accordance with the Act and its implementing regulations, we have determined that the designation of critical habitat for *S. brevispinus* is not prudent for the above mentioned reasons and the potential increased degree of threat to this species that may result from such designation.

Significant Portion of the Range

Under the Act and our implementing regulations, a species may warrant listing if it is threatened or endangered in a significant portion of its range. Because this 12-month finding to list the species as threatened or endangered throughout its entire range is warranted but precluded, we do not need to perform a ''significant portion of the range'' analysis for the species at this time. Due to the restricted nature of *Sclerocactus brevispinus'* range, we assessed its entire known range. The species is restricted to one population of an estimated 8,000 individuals, distributed across a relatively small area that is 16 km (10 mi) long by 8 km (5 mi) wide. Threats to the species' survival are similar across its range, with energy development occurring across virtually all of the species' range. Because of its relatively restricted population distribution, the threats described above, and the uniformity of threats across its range, we have determined that *S. brevispinus* should be listed as threatened or endangered throughout its entire range.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources available and competing demands for them. In any given Fiscal Year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is warranted but precluded by higher priority listing actions.

The resources available for listing actions are determined through the annual congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists or to change the status of a species from threatened to endangered; resubmitted petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program management functions (including preparing and allocating budgets, responding to congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to, gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by their complexity, i.e., more complex actions generally are more costly. For example, during the past several years, the cost (excluding publication costs) for preparing a 12-month finding, without a proposed rule, has ranged from approximately $11,000 for a species with a restricted range and involving a relatively uncomplicated analysis, to $305,000 for a species that is wide-ranging and involved a complex analysis.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each FY since then, Congress has placed a statutory cap on funds that may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that FY. This cap was designed to prevent funds appropriated for other functions under the Act, or for other Service programs, from being used for Listing Program actions (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997).

Recognizing that designation of critical habitat for species already listed would consume most of the overall Listing Program appropriation, Congress also put a critical habitat subcap in place in FY 2002, and has retained it each subsequent year to ensure that some funds are available for other work in the Listing Program. ''The critical habitat designation subcap will ensure that some funding is available to address other listing activities'' (House Report No. 107–103, 107th Congress, 1st Session, June 19, 2001). In FY 2002, and each year since then, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat. Consequently, none of the critical habitat subcap funds have been available for other listing activities.

Through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress recognized that the availability of resources was the key element in deciding whether, when making a 12-month petition finding, we would prepare and issue a listing proposal or make a ''warranted but precluded'' finding for a given species. The Conference Report accompanying Public Law 97–304, which established the current statutory deadlines and the warranted but precluded finding, states (in a discussion on 90-day petition findings that by its own terms also covers 12-month findings) that the deadlines were ''not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [i.e., for a lower-ranking species] unwise.'' In FY 2007, ''expeditious progress'' is the amount that could be achieved with $5,193,000, which is the Listing Program appropriation that is not within the critical habitat subcap.

Our process is to make determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first, and to allocate our listing budget on a nationwide basis. However, through court orders and court-approved settlements, Federal district courts have mandated that we must complete certain listing activities for specified species, and have established the schedules for completion of the activities. The species involved in these court-mandated listing activities are not always the ones that we have identified as being most in need of listing. A large majority of the $5,193,000 appropriation available in FY 2007 for new listings of species is being used for court-mandated listing activities; by ordering or sanctioning these actions, the courts determined that they were the highest priority actions to be undertaken with available funding. Copies of the court orders and settlement agreements referred to below are available from the Service and are part of our administrative record.

The FY 2007 appropriation of $5,193,000 for listing activities, not related to critical habitat designations for species that are already listed, is fully allocated to fund work in the following categories: compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related and administrative- and program-management functions; and a few high-priority listing actions. The allocations for each specific listing action are included in the Service's FY 2007 Allocation Table. Although more funds are available in FY 2007 than in previous years for work on listing actions that were not the subject of court orders or court-approved settlement agreements, limited FY 2007 funds are available for work on proposed listing determinations for the following high-priority candidate species: Two Oahu plants (*Doryopteris takeuchii, Melicope hiiakae*), seven Kauai plants (*Chamaesyce eleanoriae, Charpentiera densiflora, Melicope degeneri, Myrsine mezii, Pritchardia hardyi, Psychotria grandiflora, Schiedea attenuata*), and four Hawaiian damselflies (*Megalagrion nesiotes, Megalagrion leptodemas, Megalagrion oceanicum, Megalagrion pacificum*). These species have all been assigned a listing priority number (LPN) of 2.

Our decision that a proposed rule to reclassify *Sclerocactus brevispinus* as endangered is warranted but precluded includes consideration of its current listed status as threatened. One of the primary reasons that reclassifying *Sclerocactus brevispinus* as endangered is a lower priority is that it is currently listed as threatened under the Act, and therefore already receives certain protections. The Service promulgated regulations extending take prohibitions for endangered species under section 9 to threatened species (50 CFR 17.31). Protections included under section 7(a)(2) of the Act specify that Federal agencies must ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species.

We consider the priority for changing the status of *Sclerocactus brevispinus* from threatened to endangered to be lower than for candidate species in need of protection under the Act. In accordance with guidance we published on September 21, 1983, we assign a LPN to each candidate species (48 FR 43098). Such a priority ranking guidance system is required under section 4(h)(3) of the Act (16 U.S.C. 1533(h)(3)). Using this guidance, we assign each candidate a LPN of 1 to 12, depending on the magnitude of threats, imminence of threats, and taxonomic status; the lower the listing priority number, the higher the listing priority, i.e., a species with an LPN of 1 would have the highest listing priority. We currently have more than 120 species with an LPN of 2 (see Table 1 of the September 12, 2006, Notice of Review; 71 FR 53756). For the next 2 years, we have funded proposed listings for several species with an LPN of 2. We consider *Sclerocactus brevispinus* to be precluded by these high priority candidate species.

A determination that listing, or changing the status from threatened to endangered, is warranted but precluded also must demonstrate that expeditious progress is being made to add qualified species to, and remove qualified species from, the Lists. Our expeditious progress made in the FY 2007 Listing Program, up to the date of this 12-month finding, included preparing and publishing the following:

FY 2007 COMPLETED LISTING ACTIONS AS OF 06/06/2007

Publication date	Title/species	Actions	Federal Register pages
10/11/2006	Withdrawal of the Proposed Rule to List the Cow Head Tui Chub (*Gila biocolor vaccaceps*) as Endangered.	Final withdrawal, Threats eliminated.	71 FR 59700–59711.
10/11/2006	Revised 12-Month Finding for the Beaver Cave Beetle (*Pseudanophthalmus major*).	Notice of 12-month petition finding, Not warranted.	71 FR 59711–59714.
11/14/2006	12-Month Finding on a Petition to List the Island Marble Butterfly (*Euchloe ausonides insulanus*) as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	71 FR 66292–66298.
11/14/2006	90-Day Finding for a Petition to List the Kennebec River Population of Anadromous Atlantic Salmon as Part of the Endangered Gulf of Maine Distinct Population Segment.	Notice of 90-day petition finding, Substantial.	71 FR 66298–66301.
11/21/2006	90-Day Finding on a Petition To List the Columbian Sharp-Tailed Grouse as Threatened or Endangered.	Notice of 90-day petition finding, Not substantial.	71 FR 67318–67325.
12/05/2006	90-Day Finding on a Petition To List the Tricolored Blackbird as Threatened or Endangered.	Notice of 90-day petition finding, Not substantial.	71 FR 70483–70492.
12/06/2006	12-Month Finding on a Petition To List the Cerulean Warbler (*Dendroica cerulea*) as Threatened with Critical Habitat.	Notice of 12-month petition finding, Not warranted.	71 FR 70717–70733.
12/6/2006	90-Day Finding on a Petition To List the Upper Tidal Potomac River Population of the Northern Water Snake (*Nerodia sipedon*) as an Endangered Distinct Population Segment.	Notice of 90-day petition finding, Not substantial.	71 FR 70715–70717.
12/14/2006	90-Day Finding on a Petition to Remove the Uinta Basin Hookless Cactus From the List of Endangered and Threatened Plants; 90-Day Finding on a Petition To List the Pariette Cactus as Threatened or Endangered.	Notice of 5-year Review Initiation. Notice of 90-day petition finding, Not substantial. Notice of 90-day petition finding, Substantial.	71 FR 75215–75220.

FY 2007 COMPLETED LISTING ACTIONS AS OF 06/06/2007—Continued

Publication date	Title/species	Actions	Federal Register pages
2/19/2006	Withdrawal of Proposed Rule to List *Penstemon grahamii* (Graham's beardtongue) as Threatened With Critical Habitat.	Notice of withdrawal, More abundant than believed, or diminished threats.	71 FR 76023–76035.
12/19/2006	90-Day Finding on Petitions to List the Mono Basin Area Population of the Greater Sage-Grouse as Threatened or Endangered.	Notice of 90-day petition finding, Not substantial.	71 FR 76057–76079.
01/09/2007	12-Month Petition Finding and Proposed Rule To List the Polar Bear (*Ursus maritimus*) as Threatened Throughout Its Range; Proposed Rule.	Notice of 12-month petition finding, Warranted. Proposed Listing, Threatened	72 FR 1063–1099.
01/10/2007	Endangered and Threatened Wildlife and Plants; Clarification of Significant Portion of the Range for the Contiguous United States Distinct Population Segment of the Canada Lynx.	Clarification of findings	72 FR 1186–1189.
01/12/2007	Withdrawal of Proposed Rule To List *Lepidium papilliferum* (Slickspot Peppergrass).	Notice of withdrawal, More abundant than believed, or diminished threats.	72 FR 1621–1644.
02/02/2007	12-Month Finding on a Petition To List the American Eel as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	72 FR 4967–4997.
02/08/2007	Final Rule Designating the Western Great Lakes Populations of Gray Wolves as a Distinct Population Segment; Removing the Western Great Lakes Distinct Population Segment of the Gray Wolf From the List of Endangered and Threatened Wildlife.	Final Deferred date .... Final Delisting, Recovered .... Final Listing, Endangered	72 FR 6051–6103.
02/13/2007	90-Day Finding on a Petition To List the Jollyville Plateau Salamander as Endangered.	Notice of 90-day petition finding, Substantial.	72 FR 6699–6703.
02/13/2007	90-Day Finding on a Petition To List the San Felipe Gambusia as Threatened or Endangered.	Notice of 90-day petition finding, Not substantial.	72 FR 6703–6707.
02/14/2007	90-Day Finding on A Petition to List *Astragalus debequaeus* (DeBeque milkvetch) as Threatened or Endangered.	Notice 90-day petition finding, Not substantial.	72 FR 6998–7005.
02/21/2007	90-Day Finding on a Petition To Reclassify the Utah Prairie Dog From Threatened to Endangered and Initiation of a 5-Year Review.	Notice of 5-year Review Initiation. Notice of 90-day petition finding, Not substantial.	72 FR 7843–7852.
03/08/2007	90-Day Finding on a Petition To List the Monongahela River Basin Population of the Longnose Sucker as Endangered.	Notice of 90-day petition finding, Not substantial.	72 FR 10477–10480.
03/29/2007	Final Rule Designating the Greater Yellowstone Area Population of Grizzly Bears as a Distinct Population Segment; Removing the Yellowstone Distinct Population Segment of Grizzly Bears From the Federal List of Endangered and Threatened Wildlife; 90-Day Finding on a Petition To List as Endangered the Yellowstone Distinct Population Segment of Grizzly Bears.	Final delisting, Recovered Final listing, Threatened.	72 FR 14865–14938.
03/29/2007	90-Day Finding on a Petition To List the Siskiyou Mountains Salamander and Scott Bar Salamander as Threatened or Endangered.	Notice 90-day petition finding, Substantial.	72 FR 14750–14759.
04/24/2007	Revised 12-Month Finding for Upper Missouri River Distinct Population Segment of Fluvial Arctic Grayling.	Notice of 12-month petition finding, Not warranted.	72 FR 20305–20314.
05/02/2007	12-Month Finding on a Petition to List the Sand Mountain Blue Butterfly (*Euphilotes pallescens* ssp. *arenamontana*) as Threatened or Endangered with Critical Habitat.	Notice of 12-month petition finding, Not warranted.	72 FR 24253–24263.
05/30/2007	90-Day Finding on a Petition To List the Mt. Charleston Blue Butterfly as Threatened or Endangered.	Notice of 90-day petition finding, Substantial.	72 FR 29933–29941.
06/05/2007	Initiation of 12-Month Status Review and Request for Information on the Wolverine.	Initiation of status review	72 FR 31048–31049.
06/06/2007	90-Day Finding on a Petition to List the Yellow-billed Loon as Threatened or Endangered.	Notice of 90-day petition finding, Substantial.	72 FR 31256–31264.
06/13/2007	12-Month Finding on a Petition to List the Colorado River Cutthroat Trout as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	72 FR 32589–32605.
06/25/2007	Amended 12-Month Finding on a Petition to List the Sierra Nevada Distinct Population Segment of the Mountain Yellow-Legged Frog as Threatened or Endangered.	Notice of amended 12-month petition finding, Warranted but precluded.	72 FR 34657–34661.
07/05/2007	12-Month Finding on a Petition to List the Casey's June Beetle as Endangered with Critical Habitat.	Notice of 12-month petition finding, Warranted but precluded.	72 FR 36635–36646.
08/15/2007	90-Day Finding on a Petition to List the Yellowstone National Bison Herd as Endangered.	Notice of 90-day petition finding, Not-substantial.	72 FR 45717–45722.
08/16/2007	90-Day Finding on a Petition to List *Astragalus anserinus* (Goose Creek milk-vetch) as Threatened or Endangered.	Notice of 90-day petition finding, Substantial.	72 FR 46023–46030.

Our expeditious progress also includes work on listing actions (listed below) for 40 species that have not been completed as of the date we made this 12-month finding for *Sclerocactus brevispinus*. We are working on the actions in the top section of the table under a deadline set by a court, and on all other actions to meet statutory timelines (required under the Act).

LISTING ACTIONS FUNDED BUT NOT YET COMPLETED IN FY 2007

Species	Action
Actions Subject to Court Order/Settlement Agreement	
Wolverine	12-month petition finding (remand).
Western sage grouse	90-day petition finding (remand).
Queen Charlotte goshawk	Final listing determination.
Rio Grande cutthroat trout	12-month petition finding (remand).
Statutory Listing Actions	
Polar bear	Final listing determination.
Ozark chinquapin	90-day petition finding.
Kokanee	90-day petition finding.
Utah prairie dog	90-day petition finding.
Black-footed albatross	90-day petition finding.
Tucson shovel-nosed snake	90-day petition finding.
Gopher tortoise—Florida population	90-day petition finding.
Sacramento valley tiger beetle	90-day petition finding.
Eagle lake trout	90-day petition finding.
Smooth billed ani	90-day petition finding.
Mojave ground squirrel	90-day petition finding.
Gopher Tortoise—eastern population	90-day petition finding.
Bay Springs salamander	90-day petition finding.
Tehachapi slender salamander	90-day petition finding.
Coaster brook trout	90-day petition finding.
Mojave fringe-toed lizard	90-day petition finding.
Evening primrose	90-day petition finding.
Palm Springs pocket mouse	90-day petition finding.
Northern leopard frog	90-day petition finding.
Mountain whitefish—Big Lost River population	90-day petition finding.
Giant Palouse earthworm	90-day petition finding.
Shrike, Island loggerhead	90-day petition finding.
Cactus ferruginous pygmy owl	90-day petition finding.
High Priority	
2 Oahu plants	Proposed listing.
7 Kauai plants	Proposed listing.
4 Hawaiian damselflies	Proposed listing.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant laws and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, the actions described above collectively constitute expeditious progress.

Conclusion

We will list *Sclerocactus brevispinus* as threatened or endangered when funding is available for discretionary listing actions. We intend any listing action for *Sclerocactus brevispinus* to be as accurate as possible. Therefore, we will continue to accept additional information and comments on the status of and threats to this species from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding. If an emergency situation develops with this species that warrants an emergency listing, we will act immediately to provide additional protection.

References Cited

A complete list of all references cited is available upon request from the Supervisor at the U.S. Fish and Wildlife Service, Utah Field Office (see **ADDRESSES**).

Author

The primary author of this document is Larry England of the Utah Field Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation of Taxonomic Change

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by revising the entry for ''*Sclerocactus glaucus*'' and by adding entries for ''*Sclerocactus brevispinus*'' and ''*Sclerocactus wetlandicus,*'' in alphabetical order under FLOWERING PLANTS, to the List of Threatened and Endangered Plants, to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Sclerocactus brevispinus.	Pariette cactus	U.S.A. (UT)	Cactaceae	T	59	NA	NA
Sclerocactus glaucus	Colorado hookless cactus.	U.S.A. (CO)	Cactaceae	T	59	NA	NA
*	*	*	*	*	*	*	
Sclerocactus wetlandicus.	Uinta Basin hookless cactus.	U.S.A. (UT)	Cactaceae	T	59	NA	NA
*	*	*	*	*	*	*	

Dated: August 31, 2007.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E7–18195 Filed 9–17–07; 8:45 am]

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Notices

Federal Register

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Tuesday, September 18, 2007

DEPARTMENT OF AGRICULTURE

Forest Service

Camp Four Vegetation Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service, Chequamegon-Nicolet National Forest, Medford-Park Falls Ranger District intends to prepare an environmental impact statement (EIS) to document the analysis and disclose the environmental effects of proposed land management activities, and corresponding alternatives within the Camp Four project area. The primary purpose of this proposal is to implement activities consistent with direction in the Chequamegon-Nicolet National Forests Land and Resource Management Plan (Forest Plan) and respond to specific needs identified in the project area.

The project area is located on National Forest System land in the north central portion of the Park Falls landbase of the Medford-Park Falls Ranger District, approximately 9 miles east of Park Falls, Wisconsin. The legal description for the area is: Township 40 North, Range 2 East, sections 1–3, 9–17, 19–28, 35; Township 40 North, Range 3 East, sections 4, 6, 8–10, 16–20, 29; 4th Principal Meridian.

DATES: Comments concerning the scope of the analysis must be received within 30 days of publication of this notice to receive timely consideration in the preparation of the draft EIS.

ADDRESSES: Send written comments to Jeanne Higgins, c/o Ann Hoefferle, Medford-Park Falls Ranger District, 850 N. 8th St., Medford, Wisconsin 54451. Send electronic comments to: *ahoefferle@fs.fed.us* with a subject line that reads "Camp Four Project."

FOR FURTHER INFORMATION CONTACT: Ann Hoefferle, Camp Four Interdisciplinary Team Leader, Medford-Park Falls Ranger District, Chequamegon-Nicolet National Forest, USDA Forest Service: Telephone 715–748–4875 (or TTY: 711, National Relay System), e-mail *ahoefferle@fs.fed.us.* To mail correspondence to Ann Hoefferle, see information in **ADDRESSES**. Copies of documents may be obtained at the same address. Another means of obtaining information is to visit the Forest Web site at: *http://www.fs.fed.us/r9/cnnf/natres/index.html.*

SUPPLEMENTARY INFORMATION: The information presented in this notice is included to help the reviewer determine if they are interested in or potentially affected by this proposed project. The information presented in this notice is summarized. Those who wish to comment on this proposal or are otherwise interested in or potentially affected by it are encouraged to review more detailed documents such as the Proposed Action for the Camp Four Project (currently available for review) and the draft EIS. See the preceding section of this notice for the person to contact for more detailed information about this project.

Project Background

The Camp Four project falls within the area defined in the Chequamegon-Nicolet National Forests 2004 Land and Resource Management Plan (Forest Plan) as Management Area (MA) 4A and 8D. Vegetation management in MA 4A is towards coniferous, mixed coniferous-hardwood and aspen forests. Natural and plantation conifer stands are most prevalent, but both hardwood and aspen are well represented in the landscape. MA 8D is characterized by free-flowing rivers and associated corridors in a natural condition identified for special management on federal or state level. This management area provides habitat for riparian-dependant fish and wildlife species, area for recreational activities, and wildlife viewing opportunities. Two segments of the South Fork of the Flambeau River that are included in the project area are eligible national scenic and recreation river segments.

Forest Plan guidance for MA 4A includes species distribution of the aspen, balsam fir, paper birch, jack pine, red and white pine, northern hardwoods, and oak to be within a certain percentage range in order to maintain and develop a desired landscape dominated by coniferous, mixed coniferous-hardwood and aspen forests. This landscape composition would in turn benefit wildlife by providing a winter food source and thermal cover for species such as northern saw-whet owl, brown creeper, black pole warbler, chipping sparrow, pine warbler and red breasted nuthatch that are often associated with coniferous and mixed conifer-hardwood forests. Currently, the species distribution within MA 4A in the project area has more aspen than desired to meet management area objectives.

Additionally, the Forest Plan recommends that certain percentages of the aspen, paper birch and jack pine be within certain age categories in order to maintain the type and provide a variety of wildlife habitat. Currently, aspen and paper birch age classes are overrepresented in the older age classes, while the younger age classes are deficit, or moving towards a deficit condition.

Forest Plan guidance for vegetation within MA 8D includes treatment for the purposes of restoring or enhancing fish and wildlife habitat and visual quality. Vegetation management will be designed to create a large-tree character, and species composition that favors long-lived, large diameter trees. There are opportunities along the South Fork of the Flambeau River corridor (MA 8D) to convert mature aspen stands to long-lived tree species and maintain the health and vigor of existing red pine stands.

Purpose and Need for Action

The primary purpose of the Camp Four proposal is to implement activities consistent with direction in the Forest Plan and to respond to specific needs identified in the project area. The primary project-specific needs are to address maintenance of forest health and tree vigor, develop a desired landscape species distribution and adjust the age class distribution for aspen, paper birch and jack pine to the desired range within MA 4A and 8D, as identified in the Forest Plan. An associated need is to provide a safe and efficient transportation system within the project area.

Proposed Action

To meet the need of maintaining a healthy forest and tree vigor, proposed land management activities (proposed actions) include thinning red pine plantations on approximately 1,700 acres and treating approximately 800 acres of mixed northern hardwoods through thinning and selection harvest.

To meet the desired need of developing a landscape species distribution that is dominated by conifer and coniferous hardwood and aspen forests, the following activities are proposed: Convert mature aspen through shelterwood harvest and underplanting white pine on approximately 900 acres, remove jack pine and aspen overstory on approximately 100 acres to promote the advanced regeneration of the hardwood in the understory and reforest approximately 90 acres of mixed pine species and oak within large openings in abandoned hayfields.

To adjust age class distribution of aspen, paper birch and jack pine within the project area to the appropriate and desired range, the following activities are proposed: Clearcut regeneration harvest on about 190 acres of mature aspen, paper birch, jack pine and white spruce and shelterwood paper birch on approximately 65 acres.

To provide a safe and efficient transportation system, the following road projects within the area are proposed: Approximately one mile of temporary road construction, one mile of permanent road construction and two miles of road reconstruction are needed to accomplish harvest activities. Temporary logging roads are roads that would be decommissioned and re-vegetated following project completion.

In addition, approximately 24 miles of existing road within the project area, some of which would be utilized for the harvest activity, will be decomissioned and revegetated. These roads were identified as no longer needed for management activities and many are not Forest System roads. Most were probably utilized for past harvest activity, but since they would not be needed again for many years (20–40), they will be dropped from our road inventory following decommissioning activity.

Approximately eight miles of existing road will be closed. These roads are needed to meet future access needs but were identified for closure to all motorized use, except for administrative purposes, due to resource conflicts and public safety. Roads will be closed using gates, rock or berm barriers.

Preliminary Issues

Included with the proposal and any action alternatives to the proposal will be the implementation of the Forest Plan standards and guides as they apply to this project. Plan standards and guides are detailed information on how the activities will be carried out or implemented and address potential impacts to brook trout habitat, heritage resources, forest age structure as it relates to forest health, wildlife species (spruce grouse, wolf, bald eagle, etc.), water, wetlands, and soils, and some potential economic and social impacts (such as visual quality, recreation). These standards and guidelines have been considered and incorporated into the proposed action. The incorporation of the Plan standards and guides is intended to reduce or eliminate potential adverse effects of the activities that may result from the proposed action.

Given the inclusion of the Plan standards and guides in the development of the proposed action, the following preliminary issue was identified: Potential effects on nesting habitat for the Northern goshawk, a Regional Forester Sensitive Species (RFSS). There are several probable Northern goshawk nests within the project area and while the Forest Plan has standards and guides that minimize direct disturbance to this species' known nesting habitat, disturbance to potential nesting habitat at this time is unknown. At a minimum, this species will be evaluated to determine impacts (if any) to habitat and any subsequent impact to population viability.

Possible Alternatives

Alternatives to the proposed action that are currently being considered for display in the draft EIS are as follows: The required No Action alternative and the proposed action alternative.

Nature of the Decision To Be Made

The primary decision will be whether or not to implement the proposed projects or alternatives of the projects within the project area. The decision may also include additional resource protection measures, monitoring, and whether Forest Plan amendments are needed to implement the decision.

Responsible Official

Jeanne Higgins, Forest Supervisor, Chequamegon-Nicolet National Forest, 1170 4th Avenue South, Park Falls, WI 54552.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the EIS. Comments in response to this solicitation for information should focus on (1) The proposal; (2) issues or impacts from the proposal; and (3) possible alternatives for addressing issues associated with the proposal. We are especially interested in information that might identify a specific undesired result of implementing the proposed actions.

Comments received in response to this solicitation and subsequent solicitations, including names and addresses of those who comment, will be considered part of the public record and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. See the section titled **ADDRESSES** in this notice for location of where to send comments.

Estimated Dates for Filing

The draft EIS is expected to be filed with the Environmental Protection Agency and be available for public review in February 2008. A 45-day comment period will follow publication of a Notice of Availability of the draft EIS in the **Federal Register**. Comments received on the draft EIS will be used in preparation of a final EIS. We expect to file the notice of the availability of the final EIS and Record of Decision (ROD) in the **Federal Register** in June 2008.

Early Notice of the Importance of Public Participation in Subsequent Environmental Review: The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the draft EIS. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, section 21).

Dated: September 7, 2007.

Jeanne Higgins,

Forest Supervisor.

[FR Doc. E7–18341 Filed 9–17–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Request for Proposals for Woody Biomass Utilization Grant—Forest Restoration Activities on National Forest System Lands

AGENCY: Forest Service, USDA.

ACTION: Request for proposals.

SUMMARY: The USDA Forest Service, State and Private Forestry, Technology Marketing Unit, located at the Forest Products Laboratory, requests proposals for forest product projects that increase the use of woody biomass from National Forest System lands. The woody biomass utilization grant program is intended to help improve forest restoration activities by using and creating markets for small-diameter material and low-valued trees removed from forest restoration activities, such as reducing hazardous fuels, handling insect and diseased conditions, or treating forestlands impacted by catastrophic weather events. These funds are targeted to help communities, entrepreneurs, and others turn residues from forest restoration activities into marketable forest products and/or energy products.

DATES: *Pre-application Deadline:* Close of business November 2, 2007.

Full application Deadline: Close of business February 1, 2008.

ADDRESSES: All pre- and full-application packages must be sent to the following address: ATTN: Patricia Brumm, Grants and Agreements Specialist, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, WI 53726–2398. Detailed information regarding what to include in the pre- and full-application, definitions of terms, eligibility and federal restrictions are available at *http://www.fpl.fs.fed.us/tmu* (under Woody Biomass Grants), and at *http://www.grants.gov.* Paper copies of the information are also available by contacting the USDA Forest Service, S&PF Technology Marketing Unit, One Gifford Pinchot Drive, Madison, WI 53726–2398.

FOR FURTHER INFORMATION CONTACT: For questions regarding the grant application or administrative regulations, contact Patricia Brumm, Grants and Agreements Specialist, (608) 231–9298, *pbrumm@fs.fed.us;* for program and technical questions, contact Susan LeVan, Program Manager, (608) 231–9504, *slevan@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: To meet the shared goals of Public Law 109–58, the Energy Policy Act of 2005, and the anticipated Public Law governing the Department of the Interior, Environment, and Related Agencies Appropriate Act of 2008, the agency is requesting proposals to address the nationwide challenge in dealing with low-valued material removed from hazardous fuel reduction activities, restoration of insect and diseased conditions or catastrophic weather events. The Woody Biomass Utilization Grant Program has a pre-application submission process, and upon notification, selected pre-applicants will be asked to submit a full application. Goals of the grant program are the following:

- Help reduce forest management costs by increasing value of biomass and other forest products generated from forest restoration activities.
- Create incentives and/or reduce business risk for increased use of biomass from national forestlands (must include National Forest System lands, however, may also include other lands such as, BLM, Tribal, State, local, and private).
- Institute projects that target and help remove economic and market barriers to using small-diameter trees and woody biomass.
- Help generate renewable energy from woody.
- Build industry infrastructure around national forestlands where no or limited industry infrastructure exists.
- Require a Forest Service letter of support for the woody biomass grant project on National Forest System lands.

Woody Biomass Grants Program

1. Eligibility Information

a. Eligible Applicants. Eligible applicants are State, local, and Tribal governments, school districts, communities, non-profit organizations, businesses, companies, corporations, or special purpose districts, e.g., public utilities districts, fire districts, conservation districts, or ports. Only one application per business or organization will be accepted. If applicants have received a Woody Biomass Utilization Grant within the last three years, they are not eligible. Construction projects involving a permanent building or infrastructure item, such as roads, are not allowed with federal funds; however construction funds can be part of the non-federal cost share. For Alaska, only applicants on the Seward Ranger District on the Chugach National Forest are eligible to apply for this grant. Cordova and Glacier Ranger Districts on the Chugach are not eligible. Ranger Districts on the Tongass National Forest are not eligible.

b. Cost Sharing (Matching Requirement). Applicants must demonstrate at least a 20% match of the total project cost. This match must be from non-Federal sources, which can include cash or in-kind contributions.

2. Duns Number

All applicants must include a Dun and Bradstreet (D&B), Data Universal Numbering System (DUNS) number in their full application. For the purpose of this requirement, the applicant is the entity that meets the eligibility criteria and has the legal authority to apply for an award. For assistance in obtaining a DUNS number at no cost, call the DUNS number request line (1–866–705–5711) or register on-line at *http://fedgov.dnb.com/webform.* By submission of an application, the applicant acknowledges the requirement that prospective awardees shall be registered in the Central Contractor Registration (CCR) database prior to award, during performance, and through final payment of any grant resulting from this solicitation. Further information can be found at *http://www.ccr.gov.* For assistance, contact the CCR Assistance Center (1–888–227–2423).

3. Award Information

At least $4 million are available for granting under this program. Individual grants will not be less than $50,000 or more than $250,000. Funds are presently not available for this grant program. The Government's obligation under this program is contingent upon the availability of 2008 appropriated funds from which payment for grant purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Grants Officer for this program, and until the Cooperator receives notice of such availability, to be confirmed in writing by the Grants Officer. Successful applicants will be announced by March 14, 2008. The maximum length of the award is 3 years from the date of award. Written annual financial performance reports and semi-annual project performance reports shall be required. Applicants should be aware that the grant funds are regarded as taxable income and a form 1099 will be send by the Forest Service to the IRS. Awardees are expected to follow all OSHA requirements regarding safe working practices.

4. Application Review Process

A two-step technical evaluation process is used for applications submitted under this solicitation. The first step requires the applicant to submit a preliminary application (pre-application). Pre-applications are evaluated on the evaluation criteria discussed in Section 5.

A review panel of technical experts from Federal agencies judges the pre-applications. Panel members independently review the pre-applications according to the evaluation criteria and point system. A total of 100 points is possible. As a result of this preliminary review, successful pre-applications are invited to submit a full-application package. Unsuccessful pre-applicants are removed from further consideration for funding under this solicitation. In either case, a letter of notification is provided to each applicant.

The second step requires the applicant to submit a full-application package, which is evaluated based on the same evaluation criteria as the preliminary application. The full-application package is evaluated for technical and financial feasibility. The reviewers discuss, rank, and make recommendations to Executive Steering Committee of Senior Federal officials.

5. Evaluation Criteria and Point System

a. Impact on National Forest System Lands Forest Restoration Activities: Total Points 40

• Condition of the forestlands proposed for the project, such as Fire Regime Condition Class (*http://www.frcc.gov*), insect and disease risk conditions, or degraded forestlands due to catastrophic weather events.
• Direct, tangible benefits with and without the grant (e.g., increased acres treated from forest restoration activities, increased value of raw material removed from forest restoration activities, and reduced Forest Service's cost per acre.)
• Indirect, intangible benefit (such as air quality benefits, water quality benefits, socio-economic impacts, wildlife habitat, and watershed improvements).
• Opportunities created for using woody biomass material around National Forest System lands in locations where no or limited industry capacity exists.

b. Technical Approach Work Plan: Total Points 25

• Technical feasibility of the proposed work.
• Adequacy and completeness of the proposed tasks.
• Likelihood of meeting project objectives.
• Timeliness and reasonableness of time schedule.
• Identified deliverables/tasks.
• Evaluation and monitoring plan.

c. Financial feasibility: Total Points 25

• Realistic budget and timeframe.
• Thorough financial documentation (see description of required documentation under financial feasibility, Section 7.c.)
• Level of matching funds for the grant.

d. Qualifications and Experience of Applicant: Total Points 10

• Experience, capabilities (technical and managerial).
• Demonstrated capacity.

If there are no technical or financial problems for the project, and there is significant impact on reducing the Forest Service's cost per acre, full points are given. If there are minor deficiencies, which could limit success, midway points are given. If there are major deficiencies, which could render the project unsuccessful, minimum points are given. Further scoring criteria can be found at *http://www.fpl.fs.fed.us/tmu* (under Woody Biomass Grants) and at *http://www.grants.gov.* Full-application packages that do not submit ALL required financial information will be disqualified.

6. Pre-Application Information

a. Pre-Application Submission. Pre-applications are required. Specific content and submission requirements for the pre-application are as follows: Each submittal must be composed of two paper copies (single-sided) of the pre-application and one original copy. All proposals for the pre-application must be on 8.5 by 11-inch plain white paper with a minimum font size of 11 letters per inch. Top, bottom, and side margins must be no less than three-quarters of an inch. All pages must be clearly numbered. The paper copies of the application package should be stapled with a single staple at the upper left-hand corner. Do not staple the original.

b. Pre-Application Content. SF 424 and 424A shall be submitted with the application for consideration (*http://www.grants.gov*). Assemble information in the following order: cover page, SF 424, SF 424A, project summary, project narrative, budget justification narrative, budget, and appendices. The project narrative consists of statement of need, project coordinator(s) and partner(s), goals and objectives, technical approach work plan, impact on national forest system forest restoration treatments, and evaluation and monitoring plan. The project narrative should provide a clear description of the work to be performed and its impact on National Forest System lands. It should address the technical approach work plan under criteria 2 in section 5. The project narrative is limited to 5 pages, and excludes cover page, budget justification, budget, or appendices.

c. The discussion of the impact on National Forest System lands is a critical component because these proposals are aimed at helping the Forest Service increase the number of acres treated and decrease the cost per acre for those National Forest System lands that are at risk due to hazardous fuel buildup, insects and diseases, or catastrophic weather events. Applicants should describe qualitatively and quantitatively how the project would decrease Forest Service treatment costs and/or increase the price one might offer for the woody biomass. Specifically, proposals should address the following:

• Condition of the forest or grassland, such as providing the Fire Regime Condition Class (*http://www.frcc.gov*), the insect and disease risk, or any catastrophic weather events and the consequences of the national forest system not being able to do treatments because of the cost.
• Forest Service's current practices of handling material removed from forest restoration activities.
• What would be done with this material if grant is awarded?
• Anticipated outcomes and measures of success.

• Documentation of costs and benefits of project as a result of the award (see project feasibility discussion at *http://www.fpl.fs.fed.us/tmu* under Woody Biomass Grants or at *http://www.grants.gov.*

• Documentation of intangible benefits. Examples of tangible and intangible benefits are listed on the Technology Marketing Unit's Web site at *http://www.fpl.fs.fed.us/tmu* (under Woody Biomass Grants) or at *http://www.grants.gov.*

• Long-Term Benefits of Project: Applicant should address the length of time the benefits and impacts are anticipated (e.g., project will have long-term consequences, such as equipment improvements, or a one-time benefit, such as a subsidy.)

• Expansion capability: Does the project have the potential to expand the application to additional forest treatment areas or to create higher valued uses?

A full description of each content item may be obtained from the Technology Marketing Unit's Web site at *http://www.fpl.fs.fed.us/tmu* (under Woody Biomass Grants) or at *http://www.grants.gov,* or by calling the telephone number in the **FOR FURTHER INFORMATION CONTACT** section, or by writing to the address in the **ADDRESSES** section of this notice.

b. Pre-Application Delivery. Pre-applications must be postmarked by November 2, 2007 and received no later than 5 p.m. Central Standard Time on November 9, 2007, by Patricia Brumm at the Forest Products Laboratory. Hand-delivered or fax applications will not be accepted. E-mail applications should be submitted through *http://www.grants.gov.* No exceptions allowed. Please send pre-applications to the address listed in the **ADDRESSES** section of this notice.

7. Full-Application Information

USDA Forest Service will request full applications only from those applicants selected in the pre-application process.

a. Full-Application Submission. Specific content and submission requirements for the full application are as follows: Each submittal must be composed of two paper copies (single-sided) of the pre-application and one original copy. All proposals for the full-application must be on 8.5 by 11-inch plain white paper with a minimum font size of 11 letters per inch. Top, bottom, and side margins must be no less than three-quarters of an inch. All pages must be clearly numbered. The paper copies of the application package should be stapled with a single staple at the upper left-hand corner. Do not staple the original. Other bindings will not be accepted.

b. Full-Application Content. SF 424 and 424A shall be submitted with the application for consideration. Assemble information in the following order: Cover page, SF 424, SF424A, project summary, project narrative, budget justification narrative, budget, financial feasibility, and appendices. The project narrative consists of statement of need, project coordinator(s) and partner(s), goals and objectives, technical approach work plan, impact on national forest system forest restoration activities, environmental documentation, project work plan and timeline, social impacts, evaluation and monitoring plan, and equipment description. The project narrative should provide a clear description of the work to be performed, how it will be accomplished, and its impact on National Forest System lands. It should address the technical approach work plan under criteria 2 listed in section 5. The project narrative is limited to a total of 10 pages and excludes cover page, budget justification, budget, appendices and financial documentation.

c. Detailed Financial Information. Detailed financial information is requested to assess the potential and the capability of the applicant. All financial information remains confidential and is not accessible under the Freedom of Information Act. If the applicant has questions about how confidential information is handled they should contact Patricia Brumm at *pbrumm@fs.fed.us.* The financial information should provide a general overview of historical and projected (pro forma) financial performance. Standard accounting principles should be used for developing the required financial information. Strong applications have benefited from the use of a certified accountant to develop this information. Applicants should refer to the Technology Marketing Unit's Web site at *http://www.fpl.fs.fed.us/tmu* (under Woody Biomass Grants) or at *http://www.grants.gov* for the financial information requirements, as well as Web sites for standard financial templates.

d. Full-Application Delivery. Full applications must be postmarked by February 1, 2008, and received no later than 5 p.m. Central Standard Time on February 8, 2008, by Patricia Brumm at the Forest Products Laboratory. Hand-delivered or fax applications will not be accepted. E-mail applications should be submitted through *http://www.grants.gov.* No exceptions allowed. Please send full applications to the address listed in the **ADDRESSES** section of this notice.

8. Appendices

The following information must be included in the appendix of the pre-application and the full application package:

a. Letter of Support and Biomass Availability From Local USDA Forest Service District Ranger or Forest Supervisor Is Required: This letter must describe the status of National Environmental Policy Act (NEPA), acres, timeframes, available volumes, and opportunities for applicant to access these volumes. These letters shall be submitted with both the pre-application and full-application.

b. Letters of Support from Partners, Individuals, or Organizations: Letters of support should be included in an appendix and are intended to display the degree of collaboration occurring between the different entities engaged in the project. These letters must include commitments of cash or in-kind services from all partners and must support the amounts listed in the budget. Each letter of support is limited to one page in length.

c. Key Personnel Qualifications: Qualifications of the project manager and key personnel should be included in an appendix. Qualifications are limited to two pages in length and should contain the following: Resume, biographical sketch, references, and demonstrated ability to manage the grant.

Dated: September 13, 2007.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. E7–18380 Filed 9–17–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341, *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

List of Petitions Received by EDA for Certification of Eligibility To Apply for Trade Adjustment Assistance for the Period: 8/21/2007–9/11/2007.

Firm	Address	Date accepted for filing	Products
Viking Plastics	1 Viking Street, Cory, PA 16407	8/22/2007	Molded and assembled products for use in the HVAC and automotive Industries.
Keystone Powdered Metal Company.	251 State Street, St. Marys, PA 15857.	8/30/2007	Powdered metal products.
NRL & Associates, Inc	112 Log Canoe Circle, Stevensville, MD 21666.	8/28/2007	Parts engineered from all types of metals & plastics, used in microwave, medical device, amusements & commercial markets.
Bicron Electronics Company	5 Barlow Street, Canaan, CT 06018.	9/5/2007	Solenoid, transformers, and electronic assemblies.
Acme Machine Works, Inc	20001 E. Paisano Drive, El Paso, TX 79905.	9/5/2007	Bolts and mechanical fasteners.
L&M Precision Fabrication, Inc	13026 W. McFarlane #I–4, Airway, WA 99001.	8/27/2007	Cabinets, panels and bases for electronic and electrical control apparatus.
Cheetah Chassis Corporation	225 Lincoln Highway, Fairless Hills, PA 19030.	9/11/2007	Container chassis which include intermodal container chassis, custom chassis and specialized flatbed trailers.
Dickten Masch Plastics, LLC	N44 W3341 Waterown Plank Road, Nashtoah, WI 53058.	9/11/2007	Thermoplastic and thermoset products.
Estee Mold & Die, Inc	1467 Stanley Ave., Dayton, OH 45404.	9/11/2007	Molds for plastic, rubber and composite parts.
Presair, LLC	1009 West Boston Road, Mamaroneck, NY 10543.	9/5/2007	Pressure and vacuum switches.
Conley Corporation	2795 E 91st St., Tulsa, OK 74137.	8/27/2007	Non-corrosive plastic pipe.
Kirkwood Metal Services, LLC	3153 N. Lewis Avenue, Tulsa, OK 74110.	8/27/2007	Heavy steel tanks.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Performance Evaluation, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: September 11, 2007.

William P. Kittredge,

Program Officer for TAA.

[FR Doc. E7–18330 Filed 9–17–07; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1524]

Expansion of Foreign–Trade Zone 15, Kansas City, Missouri, Area

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board adopts the following Order:

Whereas, the Greater Kansas City Foreign Trade Zone, Inc., grantee of Foreign–Trade Zone 15, submitted an application to the Board for authority to expand FTZ 15 to include three additional sites (Sites 10–12) in the Kansas City, Missouri, area, to restore six acres to Site 8, to establish temporary Site 8T as permanent in Chillicothe, and to delete acreage from Site 7 located in Kansas City, adjacent to the Kansas City Customs and Border Protection port of entry (FTZ Docket 47–2006; filed 12/14/06);

Whereas, notice inviting public comment was given in the **Federal Register** (71 FR 77369, 12/26/06), and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 15 is approved, subject to the Act and the Board's regulations, including Section 400.28, and to the Board's standard 2,000–acre activation limit for the overall general–purpose zone project, and further subject to a sunset provision that would terminate authority on September 30, 2012, for any of the proposed sites (Sites 10–12) where no activity has occurred under FTZ procedures before that date.

Signed at Washington, DC, this 7th day of September 2007.

David M. Spooner,

Assistant Secretary of Commercefor Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–18370 Filed 9–17–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1525]

Approval of Request For Manufacturing Authority Within Foreign–Trade Zone 52, Ronkonkoma, New York, TKD Industries, Inc. (Cosmetic Kits)

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Town of Islip, operator of Foreign–Trade Zone (FTZ) 52, has requested authority under Section 400.32(b)(2) of the Board's regulations on behalf of TKD Industries, Inc., to conduct cosmetic kit manufacturing/ kitting under zone procedures within FTZ 52 in Ronkonkoma, New York (FTZ Docket 33–2006, filed 8/10/06);

Whereas, notice inviting public comment has been given in the **Federal Register** (71 FR 48910, 8/22/06); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for the manufacture/ kitting of cosmetic kits within FTZ 52, as described in the application and the **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 7th day of September 2007.

David M. Spooner,

Assistant Secretary of Commercefor Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–18369 Filed 9–17–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of U.S. National Work Group Meeting for Hydrogen Measurement Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of a meeting for the U.S. National Work Group for Hydrogen Measurement Standards, October 2007.

SUMMARY: The National Institute of Standards and Technology (NIST), Technology Services, Weights and Measures Division (WMD) announces plans to hold a U.S. National Work Group Meeting (USNWG) for the development of hydrogen measurement standards for commercial equipment on October 3–4, 2007, from 9 a.m. to 5 p.m.

DATES: October 3, 2007, to October 4, 2007.

Meeting Location and Registration: The USNWG Meeting will be held at NIST, 100 Bureau Drive, Gaithersburg, Maryland 20899. The Wednesday, October 3, meeting will be held in Building 101, Lecture Room B, and the Thursday, October 4, meeting in Building 101, Lecture Room A. Those unable to attend in person may participate via teleconference; please contact WMD for details. Written comments from stakeholders unable to attend or participate in these meeting dates must be received by Friday, September 28, 2007 and sent to the attention of Ms. Juana Williams. On-line registration at *http://www.nist.gov/public_affairs/confpage/conflist.htm* closes Wednesday, September 26, 2007; after this date, contact Ms. Angela Ellis, NIST Conference Facilities, at 301–975–3881.

SUPPLEMENTARY INFORMATION: As part of the NIST WMD mandate to ''fix the standard of weights and measures'' its staff and the USNWG will meet for the first in-person (and via audio conference) meeting to promote the development of legal metrology standards to facilitate the United States transition to a hydrogen economy. USNWG participants are technical experts working on existing related international and national standards activities, motor-fuel dispenser and component manufacturers and associated service industry, suppliers of motor-fuel products such as hydrogen, service station installers and operators, alternative fuel vehicle manufacturers, or regulatory officials enforcing legal controls over commercial devices.

Establishment of these standards will ensure the selection and use of suitable, approved, and properly maintained equipment that provides accurate hydrogen measurement and sufficient valid transaction information to the buyer and seller. Historically, these standards are adopted by the states as the basis of uniform requirements used to regulate weighing and measuring devices and commodities sold on the basis of weight, measure, or count. The goal of NIST and the USNWG is to establish commercial hydrogen measurement standards that encompass: (1) Device and related equipment codes, (2) method of sale requirements, (3) labeling requirements, (4) quality standards, (5) sampling procedures, (6) inspection procedures, (7) test equipment, and (8) safety practices. These standards and related documents will be the basis for day-to-day commercial operations, training weights and measures regulatory officials and service companies, and educating consumers about hydrogen measurement.

FOR FURTHER INFORMATION CONTACT: Juana Williams by mail at NIST, Weights and Measures Division, 100 Bureau Drive, Mail Stop 2600, Gaithersburg, MD 20899–2600; by e-mail at *juana.williams@nist.gov;* by telephone at 301–975–3989; or by fax at 301–975–8091. NIST is not open to the general public, and due to limited space, registration is required and should be completed by September 26, 2007. The USNWG meeting agenda will be available on September 6, 2007, to all registered participants and upon request by other interested parties by contacting the NIST WMD.

Dated: September 11, 2007.

James M. Turner,

Acting Director.

[FR Doc. E7–18368 Filed 9–17–07; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Monterey Bay National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) is seeking applicants for the following seats on its Sanctuary Advisory Council: Citizen At-Large, Diving, Education and Tourism. Applicants chosen for these seats should expect to serve until February 2011. A Business and Industry alternate is also being sought from a previous recruitment. This seat will expire in February 2010. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy

regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary.

DATES: Applications are due by October 26, 2007.

ADDRESSES: Application kits may be obtained from Nicole Capps at the Monterey Bay National Marine Sanctuary, 299 Foam Street, Monterey, California 93940. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Nicole Capps at (831) 647–4206, or *Nicole.Capps@noaa.gov.*

SUPPLEMENTARY INFORMATION: The MBNMS Advisory Council was established in March 1994 to assure continued public participation in the management of the Sanctuary. Since its establishment, the Advisory Council has played a vital role in decisions affecting the Sanctuary along the central California coast.

The Advisory Council's twenty voting members represent a variety of local user groups, as well as the general public, plus seven local, state and federal governmental jurisdictions. In addition, the respective managers or superintendents for the four California National Marine Sanctuaries (Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary and the Monterey Bay National Marine Sanctuary) and the Elkhorn Slough National Estuarine Research Reserve sit as non-voting members.

Four working groups support the Advisory Council: The Research Activity Panel (''RAP'') chaired by the Research Representative, the Sanctuary Education Panel (''SEP'') chaired by the Education Representative, the Conservation Working Group (''CWG'') chaired by the Conservation Representative, and the Business and Tourism Activity Panel (''BTAP'') chaired by the Business/Industry Representative, each dealing with matters concerning research, education, conservation and human use. The working groups are composed of experts from the appropriate fields of interest and meet monthly, or bi-monthly, serving as invaluable advisors to the Advisory Council and the Sanctuary Superintendent.

The Advisory Council represents the coordination link between the Sanctuary and the state and federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the central California coastal and marine ecosystems.

The Advisory Council functions in an advisory capacity to the Sanctuary Superintendent and is instrumental in helping develop policies, program goals, and identify education, outreach, research, long-term monitoring, resource protection, and revenue enhancement priorities. The Advisory Council works in concert with the Sanctuary Superintendent by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Superintendent in achieving the goals of the Sanctuary program within the context of California's marine programs and policies.

Authority: 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: September 7, 2007.

Daniel J. Basta,

Director, National Marine Sanctuary Program, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 07–4598 Filed 9–17–07; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA90

Nominations for the Western and Central Pacific Fisheries Commission Advisory Committee

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

ACTION: Request for nominations; reopening of nomination submissions period.

SUMMARY: NMFS, on behalf of the Secretary of Commerce, is seeking nominations for the advisory committee established under the Western and Central Pacific Fisheries Convention Implementation Act (Act). The advisory committee, to be composed of individuals from groups concerned with the fisheries covered by the Western and Central Pacific Fisheries Convention (Convention), will be given the opportunity to provide input to the United States Commissioners to the Western and Central Pacific Fisheries Commission (Commission) regarding the deliberations and decisions of the Commission. NMFS is reopening the nominations submission period previously published on July 11, 2007, until October 10, 2007.

DATES: Nominations must be received no later than October 10, 2007.

ADDRESSES: Nominations should be directed to William L. Robinson, Regional Administrator, NMFS Pacific Islands Regional Office, and may be submitted by any of the following means:

- E-mail: *pir.wcpfc@noaa.gov*. Include in the subject line the following document identifier: ''Advisory committee nominations''. E-mail messages, with or without attachments, are limited to 5 megabytes.
- Mail or hand delivery: 1601 Kapiolani Blvd. Suite 1110, Honolulu, HI 96814.
- Facsimile: 808–973–2941.

FOR FURTHER INFORMATION CONTACT: Raymond P. Clarke, NMFS Pacific Islands Regional Office; telephone: 808–944–2205; facsimile: 808–973–2941; e-mail: *raymond.clarke@noaa.gov*.

SUPPLEMENTARY INFORMATION:

The Convention and the Commission

The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean in accordance with the United Nations Convention on the Law of the Sea of 1982 (UNCLOS) and the Agreement for the Implementation of the Provisions of the UNCLOS Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. The Convention establishes the Commission, the secretariat of which is based in Pohnpei, Federated States of Micronesia.

The Convention applies to all highly migratory fish stocks (defined as all fish stocks of the species listed in Annex I of the UNCLOS occurring in the Convention Area, and such other species of fish as the Commission may determine), except sauries.

The United States played a very active role in supporting the negotiations and the development of the Convention and signed the Convention when it was opened for signature in 2000. It has participated as a cooperating non-member in the Commission since it became operational in 2005. Upon completion of the Convention ratification process, which will occur July 27, 2007, the United States will become a Contracting Party to the Convention and a full member of the Commission. Under the Act, the United States will be represented on the Commission by five United States

Commissioners, appointed by the President.

Advisory Committee

The Act (Public Law 109–479, sec 501–511) provides (in sec 503(d)) that the Secretary of Commerce, in consultation with the United States Commissioners to the Commission, will appoint certain members of the advisory committee established under the Act.

The members to be appointed to the advisory committee are to include not less than 15 nor more than 20 individuals selected from the various groups concerned with the fisheries covered by the Convention, providing, to the extent practicable, an equitable balance among such groups. On behalf of the Secretary of Commerce, NMFS is now seeking nominations for these appointments.

In addition to the 15–20 appointed members, the advisory committee also includes the chair of the Western and Central Pacific Fishery Management Council's Advisory Committee (or designee), and officials of the fisheries management authorities of American Samoa, Guam, and the Northern Mariana Islands (or their designees).

Members of the advisory committee will be invited to attend all non-executive meetings of the United States Commissioners to the Commission and at such meetings will be given opportunity to examine and be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission.

Each appointed member of the advisory committee will serve for a term of two years and will be eligible for reappointment.

The Secretaries of Commerce and State will furnish the advisory committee with relevant information concerning fisheries and international fishery agreements.

NMFS, on behalf of the Secretary of Commerce, will provide to the advisory committee administrative and technical support services as are necessary for its effective functioning.

Appointed members of the advisory committee will serve without pay, but while away from their homes or regular places of business in the performance of services for the advisory committee will be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code. They will be considered Federal employees while performing service as members of the advisory committee only for purposes of: (1) injury compensation under chapter 81 of title 5, United States Code; (2) requirements concerning ethics, conflicts-of-interest, and corruption, as provided by title 18, United States Code, and (3) any other criminal or civil statute or regulation governing the conduct of Federal employees in their capacity as Federal employees.

Procedure for Submitting Nominations

Nominations for the advisory committee should be submitted to NMFS (see **ADDRESSES**). Self nominations are acceptable. Nominations should include the following information: (1) Full name, address, telephone, facsimile, and e-mail of nominee; (2) nominee's organization(s) or professional affiliation(s) serving as the basis for the nomination, if any; and (3) a background statement, not to exceed one page in length, describing the nominee's qualifications, experience and interests, specifically as related to the fisheries covered by the Convention.

Dated: September 13, 2007.

Emily H. Menashes,

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

[FR Doc. 07–4615 Filed 9–13–07; 2:52 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Change in Time of Meeting

SUMMARY: The Advisory Committee on Commercial Remote Sensing (ACCRES) will meet September 20, 2007.

DATE AND TIME: The meeting is scheduled as follows: September 20, 2007, 9 a.m.–4 p.m. The first part of this meeting will be closed to the public. The public portion of the meeting will begin at 1 p.m.

ADDRESSES: The meeting will be held in the Auditorium of the National Association of Home Builders, Washington, DC, located at 1201 15th Street, NW., Washington, DC 20005. While open to the public, seating capacity may be limited.

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of the meeting of ACCRES. ACCRES was established by the Secretary of Commerce (Secretary) on May 21, 2002, to advise the Secretary through the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for the licensing of commercial remote sensing satellite systems.

Matters To Be Considered

The first part of the meeting will be closed to the public pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended by Section 5(c) of the Government in Sunshine Act, Public Law 94–409 and in accordance with Section 552b(c)(1) of Title 5, United States Code. Accordingly, portions of this meeting which involve the ongoing review and implementation of the April 2003 U.S. Commercial Remote Sensing Space Policy and related national security and foreign policy considerations for NOAA's licensing decisions are closed to the public. These briefings are likely to disclose matters that are specifically authorized under criteria established by Executive Order 12958 to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order.

All other portions of the meeting will be open to the public. During the open portion of the meeting, the Committee will receive updates on NOAA's licensing activities and foreign systems. The committee will also be available to receive public comments on its activities.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed to ACCRES, NOAA/NESDIS International and Interagency Affairs Office, 1335 East-West Highway, Room 7311, Silver Spring, Maryland 20910.

Additional Information and Public Comments

Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact Kay Weston, Designated Federal Officer for ACCRES, NOAA/NESDIS International and Interagency Affairs Office, 1335 East-West Highway, Room 7311, Silver Spring, Maryland 20910. Copies of the draft meeting agenda can be obtained from David Hasenauer at (301) 713–2024 ext. 207, fax (301) 713–2032, or e-mail *David.Hasenauer@noaa.gov*.

The ACCRES expects that public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements. In general, each individual or group making an oral presentation may be limited to a total time of five minutes. Written comments (please provide at least 13 copies) received in the NOAA/NESDIS International and Interagency Affairs Office on or before September 12, 2007, will be provided to Committee members in advance of the meeting. Comments received too close to the meeting date will normally be provided to Committee members at the meeting.

FOR FURTHER INFORMATION CONTACT: Kay Weston, NOAA/NESDIS International and Interagency Affairs, 1335 East-West Highway, Room 7313, Silver Spring, Maryland 20910; telephone (301) 713–2024 x205, fax (301) 713–2032, e-mail *Kay.Weston@noaa.gov*, or David Hasenauer at telephone (301) 713–2024 x207, e-mail *David.Hasenauer@noaa.gov.*

Mary E. Kicza,

Assistant Administrator for Satellite and Information Services.

[FR Doc. E7–18328 Filed 9–17–07; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Admittance to Practice and Roster of Registered Patent Attorneys and Agents Admitted to Practice Before the United States Patent and Trademark Office (USPTO).

Form Number(s): PTO–158, PTO–158A, PTO–275, PTO–107A, PTO–1209, PTO–2126, PTO–2146, PTO–2150.

Agency Approval Number: 0651–0012.

Type of Request: Revision of a currently approved collection.

Burden: 89,475 hours annually.

Number of Respondents: 72,122 responses per year.

Avg. Hours per Response: The USPTO estimates that it will take the public between 5 minutes (0.08 hours) and 40 hours, depending upon the complexity of the situation, to gather the necessary information, prepare, and submit the forms and requirements in this collection.

Needs and Uses: This information is required by 35 U.S.C. 2(b)(2)(D), administered by the USPTO through 37 CFR 11.5–11.11 and 11.170. The information is used by the Director of the Office of Enrollment and Discipline (OED) to determine if the applicant for registration is of good moral character and repute; has the necessary legal, scientific, and technical qualifications; and is otherwise competent to advise and assist applicants in the presentation and prosecution of applications for patent grants.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by any of the following:

E-mail: Susan.Fawcet@uspto.gov. Include ''0651–0012 copy request'' in the subject line of the message.

Fax: 571–273–0112, marked to the attention of Susan K. Fawcett.

Mail: Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before October 18, 2007 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: September 11, 2007.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E7–18326 Filed 9–17–07; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will be submitting to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Patent Processing (Updating).

Form Number(s): PTO/SB/08/08a/08b, eIDS, PTO/SB/17i, PTO/SB/17P, PTO/SB/21–28, PTO/SB/24A&B, PTO/SB/30–33, PTO/SB/35–39, PTO/SB/42–43, PTO/SB/61–64, PTO/SB/64a, PTO/SB/67–68, PTO/SB/91–92, PTO/SB/96–97, PTO/SB/130, PTO/SB/201, PTO/SB/206, PTO/SB/211, PTO/SB/216, PTO–2053–A/B, PTO–2054–A/B, PTO–2055–A/B, PTOL/413A & 413C, and EFS–Web.

Agency Approval Number: 0651–0031.

Type of Request: Extension of a currently approved collection.

Burden: 3,632,456 hours annually.

Number of Respondents: 2,643,259 responses per year.

Avg. Hours per Response: The USPTO estimates that it will take anywhere from 1 minute 48 sections (0.03 hours) to 22 hours, depending on the amount of information that the applicant needs to submit to the USPTO, to complete the forms and requirements associated with this information collection. This includes time to gather the necessary information, create the documents, and submit the completed request.

Needs and Uses: During the pendency of a patent application or the period of enforceability of a patent, situations arise that require collection of information for the USPTO to further process the patented file or the patent application. This information can be used by the USPTO to continue the processing of the patent or application or to ensure that applicants are complying with the patent regulations. These situations involve responses filed by applicants to various USPTO actions and may include information disclosures and citations; requests for extensions of time; the establishment of small entity status; abandonment or revival of abandoned applications; disclaimers; appeals; expedited examination of design applications; transmittal forms; requests to inspect, copy and access patent applications; publication requests; and certificates of mailing/transmission.

Affected Public: Individuals or households; business or other for-profit; and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker (202) 395–3897.

Copies of the above information collection proposal can be obtained by any of the following:

E-mail: Susan.Fawcet@uspto.gov. Include ''0651–0031 copy request'' in the subject line of the message.

Fax: 571–273–0112, marked to the attention of Susan K. Fawcett.

Mail: Susan K. Fawcett, Records Officer, Office of the Chief Information

Officer, Customer Information Services Group, Public Information Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before October 18, 2007 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: September 11, 2007.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E7–18333 Filed 9–17–07; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Patent Term Extension.

Form Number(s): None.

Agency Approval Number: 0651–0020.

Type of Request: Revision of a currently approved collection.

Burden: 30,905 hours annually.

Number of Respondents: 26,859 responses per year.

Avg. Hours per Response: The USPTO estimates that it will take the public from one to 25 hours, depending on the complexity of the situation, to gather the necessary information, prepare the appropriate documents, and submit the applications, petitions, and requests included in this collection.

Needs and Uses: The Federal Food, Drug and Cosmetic Act at 35 U.S.C. 156 permits the USPTO to restore the patent term lost due to certain types of regulatory review by the Federal Food and Drug Administration or the Department of Agriculture. Only patents for drug products, medical devices, food additives, and color additives are eligible for an extension, which may be a maximum of five years. In some cases the USPTO may also extend the term of an original patent due to certain delays in the prosecution of the patent application. The provisions of 35 U.S.C. 154(b) require the USPTO to notify the applicant of the patent term adjustment in the notice of allowance and give the applicant an opportunity to request reconsideration of the USPTO's patent term adjustment determination. The USPTO administers 35 U.S.C. 154 and 156 through 37 CFR subpart F (1.701–1.791).

The public uses this information collection to file requests related to patent term extensions and petitions for reconsideration or reinstatement of patent term adjustments. This information is used by the USPTO to consider whether an applicant is eligible for a patent term extension or reconsideration of a patent term adjustment and, if so, to determine the length of the patent term extension or adjustment. There are no forms associated with this collection.

Affected Public: Businesses or other for-profits; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by any of the following methods:

E-mail: Susan.Fawcett@uspto.gov. Include ''0651–0020 copy request'' in the subject line of the message.

Fax: 571–273–0112, marked to the attention of Susan Fawcett.

Mail: Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before October 18, 2007 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: September 11, 2007.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E7–18334 Filed 9–17–07; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2007–OS–0061]

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 18, 2007.

Title, Form, and OMB Number: Registration for Scientific and Technical Information Services; DD Form 1540; OMB Control Number 0704–0264.

Type of Request: Revision.

Number of Respondents: 10,000.

Responses Per Respondent: 1.

Annual Responses: 10,000.

Average Burden Per Response: 10 minutes.

Annual Burden Hours: 1,667 hours.

Needs and Uses: The data that the Defense Technical Information Center handles is controlled, because of either distribution limitations or security classification. For this reason, all potential users are required to register for service. DoD Instruction 3200.14, Principles and Operational Parameters of the DoD Scientific and Technical Information Program, mandates the registration procedure. Federal Government agencies and their contractors are required to complete the DD Form 1540, Registration for Scientific and Technical Information Services. The contractor community completes a separate DD Form 1540 for each contract or grant, and registration is valid until the contract expires.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations is on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

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 reviewing on the Internet at *http://www.regulations.gov.* as they are received without change, including any personal identifiers or control 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 11, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4608 Filed 9–17–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DOD–2007–HA–0056]

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 18, 2007.

Title and OMB Number: Facilitating Provider Acceptance of TRICARE Standard; OMB Control Number 0720–TBD.

Type of Request: New.

Number of Respondents: 72.

Response Per Respondent: 1.

Annual Response: 72.

Average Burden Per Response: 1.5 hours.

Annual Burden Hours: 108.

Needs and uses: The information collection requirement is necessary to obtain specific responses why some providers do not participate in TRICARE and then to learn what kinds of actions by the TRICARE Management Activity, working in conjunction with the TRICARE Regional Offices and the three managed care support contractors, would be required to increase the number of providers in the TRICARE program.

Affected Public: Business or other for-profit; Federal government.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following methods:

• *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 11, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4610 Filed 9–17–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

[No. USA–2007–0005]

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 18, 2007.

Title, Form, and OMB Number: Vessel Operation Report; ENG Form 3925, 3925B, 3925C, and 3925P; OMB Control Number 0710–0006.

Type of request: Extension.

Number of respondents: 1,223.

Responses per respondents: 160,026.

Annual responses: 195,712.

Average burden per response: 13.3524 minutes.

Annual burden hours: 43,553 hours.

Needs and uses: The Corps of Engineers uses ENG Forms 3925, 3925B, 3925C, and 3925P as the basic instruments to collect waterborne commerce statistics. These data, collected from vessel operating companies, constitute the sole source for domestic vessel movements of freight and passengers on U.S. navigable waterways and harbors; are essential to plans for maintaining U.S. navigable waterways; and are critical to enforcing the ''Harbor Maintenance Tax'' authorized under Sec. 1402 of Pub. L. 99–662.

Affected public: Business or other for-profit.

Frequency: Monthly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. James Laity.

Written comments and recommendations on the proposed information collection should be sent to Mr. Laity at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

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, PRN Suite 11000, Arlington, VA 22209–2133.

Dated: September 11, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4609 Filed 9–17–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Education.

ACTION: Notice—Computer Matching between the Department of Education and the Department of Homeland Security, United States Citizenship and Immigration Services, formerly the Immigration and Naturalization Service.

SUMMARY: Pursuant to the Office of Management and Budget (OMB) *Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988,* (54 FR 25818 (June 19, 1989)) and OMB Circular A–130, Appendix I (65 FR 77677 (December 12, 2000)) notice is hereby given of the computer matching program between the Department of Education (ED) (the recipient agency), and the Department of Homeland Security, United States Citizenship and Immigration Service (USCIS), (the source agency).

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, and OMB Circular A–130, the following information is provided:

1. *Names of Participating Agencies.*

The U.S. Department of Education and the U.S. Department of Homeland Security, USCIS.

2. *Purpose of the Match.*

The matching program entitled ''Verification Division USCIS/ED'' will permit ED to confirm the immigration status of alien applicants for, or recipients of, financial assistance under Title IV of the Higher Education Act of 1965, as amended (HEA), as authorized by section 484(g) of the HEA; 20 U.S.C. 1091(g). The Title IV programs include: the Federal Pell Grant Program; the Academic Competitiveness Grant Program; the National Science and Mathematics Access to Retain Talent Grant Program; the Federal Perkins Loan Program; the Federal Work-Study Program; the Federal Supplemental Educational Opportunity Grant Program; the Federal Family Education Loan Program; the William D. Ford Federal Direct Loan Program; the Leveraging Educational Assistance Partnership Program; and the Gaining Early Awareness and Readiness for Undergraduate Programs.

3. *Authority for Conducting the Matching Program.*

The information contained in the USCIS data base is referred to as the Verification Information System (VIS), and is authorized under the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99–603. ED seeks access to the VIS database for the purpose of confirming the immigration status of applicants for assistance, as authorized by section 484(g) of the HEA, 20 U.S.C. 1091(g), and consistent with the Title IV student eligibility requirements of section 484(a)(5), 20 U.S.C. 1091(a)(5) of the HEA. USCIS is authorized to participate in this immigration status verification under section 103 of the Immigration and Nationality Act, as amended, 8 U.S.C. 1103.

4. *Categories of Records and Individuals Covered.*

The records to be used in the match and the roles of the matching participants are described as follows: Through the use of user identification codes and passwords, authorized persons from ED will transmit electronically data from its Privacy Act system of records entitled, ''Federal Student Aid Application File (18–11–01)'' to USCIS. The data will include the alien registration number, the First and Last Name, date of birth, current Social Security Number and the answer to the question, ''Are you male or female?'' of the alien applicant for, or recipient of, Title IV assistance. This action will initiate a search for corresponding data elements in a USCIS Privacy Act system of records entitled ''Verification Information System Records Notice (DHS–2007–0010).'' Where there is a match of records, the system will add the following data to the record and return the file to ED: the Primary or Secondary Verification Number, a code indicating whether the student was confirmed to be an eligible non-citizen or if a determination could not be made, the date of entry into the U.S., country of birth, and the USCIS status code of the alien applicant or recipient. In accordance with 5 U.S.C. 552a(p), ED will not suspend, terminate, reduce, or make a final denial of any Title IV assistance to such individual, or take other adverse action against such individual, as a result of information produced by such a match, until (1)(a) ED has independently verified the information; or (b) the Data Integrity Board of ED determines in accordance with guidance issued by the Director of the OMB that (i) The information is limited to identification and amount of benefits paid by ED under a Federal benefit program; and (ii) there is a high degree of confidence that the information provided to ED is accurate; (2) the individual receives a notice from ED containing a statement of its findings and informing the individual of the opportunity to contest such findings by submitting documentation demonstrating a satisfactory immigration status within 30 days of receipt of the notice; and (3) 30 days from the date of the individual's receipt of such notice has expired.

5. *Effective Dates of the Matching Program.*

The matching program will become effective 40 days after a copy of the computer matching agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and OMB, unless the requested ten-day waiver is approved by OMB or unless OMB objects to some or all of the agreement, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

6. *Address for Receipt of Public Comments or Inquires.*

Ms. Marya Dennis, Management and Program Analyst, U.S. Department of Education, Federal Student Aid, Union Center Plaza, 830 First Street, NE., Washington, DC 20002–5345. Telephone: (202) 377–3385. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use the PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.gpoaccess.gov/nara/index.html.*

Authority: 5 U.S.C. 552a; Public Law 100–503.

Dated: September 13, 2007.

Lawrence A. Warder,

Acting Chief Operating Officer, Federal Student Aid.

[FR Doc. E7–18376 Filed 9–17–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket No. EERE–2007–BT–CRT–0009]

Agency Information Collection Extension: Energy Conservation Program: Compliance and Certification Information Collection for Electric Motors

AGENCY: Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years, through the Office of Management and Budget (OMB), the mandatory Compliance Certification information collection package for certain 1 through 200 horsepower electric motors covered under the Energy Policy and Conservation Act, Public Law 94–163, as amended (EPCA); whereby, a manufacturer or private labeler reports on and certifies its compliance with energy efficiency standards for commercial and industrial electric motors covered under Title 10, Code of Federal Regulations, Part 431 (10 CFR Part 431)—Energy Efficiency Program for Certain Commercial and Industrial Equipment: Appendix C to Subpart B of Part 431: Certification of Compliance with Energy Efficiency Standards for Electric Motors.

DATES: Comments regarding this collection must be received on or before November 19, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–4650.

ADDRESSES: Written comments should be sent to: Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Also, comments should also be addressed to: Mr. James D. Raba, Building Technologies Program, EE–2J, Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585–0121, or by fax at (202) 586–4617, or by e-mail at *jim.raba@ee.doe.gov*.

Any comments submitted must identify the information collection for electric motors, and provide the docket number EERE–2007–BT–CRT–0009. Comments may be submitted using any of the following methods:

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

E-mail: appliance.information@ee.doe.gov. Include the docket number in the subject line of your message.

- *Postal Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.

Docket: For access to the docket to read background documents or comments received, go to the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room. Please note: DOE's Freedom of Information Reading Room (Room 1E–190 at the Forrestal Building) no longer houses rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to James Raba , U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, telephone (202) 586–8654. E-mail: *jim.raba@ee.doe.gov*.

Authority and Background

Part C of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6291 *et seq.*, (EPCA) establishes energy efficiency standards and test procedures for certain industrial equipment, including electric motors. Further, EPCA states that, ''the Secretary [of Energy] shall require manufacturers to certify'' that each electric motor meets the applicable efficiency standards. 42 U.S.C. 6316(c). EPCA authorizes the Secretary to carry out this requirement, in part, by issuing the necessary rules requiring each manufacturer or private labeler of covered electric motors to submit information and reports to ensure compliance. 42 U.S.C. 6316(a). This directive is carried out under 10 CFR 431.36, Compliance Certification, which requires a manufacturer or private labeler to submit a compliance statement, as well as a certification report that provides energy efficiency information for each basic model of electric motor that it distributes in commerce in the United States.

The compliance certification information collection request, at appendix C to subpart B of 10 CFR Part 431, provides a format for a manufacturer or private labeler to certify compliance with the applicable energy efficiency standards prescribed under section 342(b)(1) of EPCA, 42 U.S.C. 6313(b)(1), through an independent testing or certification program nationally recognized in the United States (EPCA 345(c), 42 U.S.C. 6316(c)). Compliance Certification information is used by DOE and United States Customs Service officials and facilitates voluntary compliance with and enforcement of the energy efficiency standards established for electric motors under EPCA 342(b)(1), 42 U.S.C. 6313(b)(1).

SUPPLEMENTARY INFORMATION: Today's notice and information collection request pertains: (1) OMB No.: 1910–5104. (2) Collection Title: Title 10 Code of Federal Regulations Part 431—Energy Efficiency Program for Certain Commercial and Industrial Equipment: Subpart B—Electric Motors: Appendix C to Subpart B of Part 431—Compliance Certification. (3) Type of Review: Renewal. (4) Purpose: Regulations that, in part, (1) Require the manufacturer of private labeler of certain commercial or industrial electric motors subject to energy efficiency standards prescribed under section 342(b) of EPCA to establish, maintain, and retain records of its test data and subsequent verification of any alternative efficiency determination method used under Part 431, and (2) preclude distribution in commerce of any basic model of commercial or industrial electric motor which is subject to an energy efficiency standard set forth under subpart B of

Part 431, unless it has submitted a Compliance Certification to DOE according to the provisions under 10 CFR 431.36, that the basic model meets the requirements of the applicable standard. This collection of information ensures compliance with the energy efficiency for certain commercial and industrial electric motors. (5) Estimated Number of Respondents: 84. (6) Estimated Total Burden Hours: 25,200 total hours requested (approximately 300 hours per manufacturer or private labeler). (7) Number of Collections: The package contains one information and recordkeeping requirement.

Comments are invited on: (a) Whether the information collections are necessary for the proper performance of the functions of the DOE, including whether the information has practical utility; (b) the accuracy of the DOE's estimate of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB review and approval of these information collections. The comments will also become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC on September 4, 2007.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E7–18275 Filed 9–17–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket No. EERE–2007–BT–WAV–0006]

Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver From Daikin U.S. Corporation and Granting of the Application for Interim Waiver From the Department of Energy Residential Central Air Conditioner and Heat Pump Test Procedure [Case No. CAC–016]

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, granting of application for interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes a Petition for Waiver from Daikin U.S. Corporation (Daikin). The Petition for Waiver (hereafter ''Daikin Petition'') requests a waiver of the Department of Energy (DOE) test procedures applicable to residential central air conditioners and heat pumps. The waiver request is specific to the Daikin Variable Refrigerant Volume VRV–II–S (residential) multi-split heat pumps and heat recovery systems. Through this document, DOE is: (1) Soliciting comments, data, and information with respect to the Daikin Petition; and (2) granting an Interim Waiver to Daikin from the DOE test procedure for residential central air conditioners and heat pumps.

DATES: DOE will accept comments, data, and information with respect to the Daikin Petition until, but no later than October 18, 2007.

ADDRESSES: You may submit comments, identified by case number [CAC–016], by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: Michael.Raymond@ee.doe.gov* Include either the case number [CAC–016], and/or ''Daikin Petition'' in the subject line of the message.
- *Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.

Instructions: All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format, and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting the signed original paper document. DOE does not accept telefacsimiles (faxes).

Any person submitting written comments must also send a copy of such comments to the petitioner, pursuant to 10 CFR 430.27(d). The contact information for the petitioner is: Mr. Russell Tavolacci, Director of Product Marketing, Daikin U.S. Corporation, 1645 Wallace Drive, Suite 110, Carrollton, TX 75006. Telephone: (972) 245–1510. E-mail: *Russell.Tavolacci@daikinac.com.*[1]

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Docket: For access to the docket to review the documents relevant to this matter, you may visit the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the Petition for Waiver and Application for Interim Waiver; and (4) prior DOE rulemakings regarding central air conditioners and heat pumps. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room. Please note that DOE's Freedom of Information Reading Room (Room 1E–190 at the Forrestal Building) is no longer housing rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. E-mail: *Michael.Raymond@ee.doe.gov.*

Francine Pinto or Eric Stas, U.S. Department of Energy, Office of the

[1] DOE notes that Daikin has updated the contact information provided in its initial petition. Accordingly, the information provided in the **ADDRESSES** section above should be used in lieu of the Daikin contact information cited in the company's original Petition for Waiver and Application for Interim Waiver (published following this notice).

General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. Telephone: (202) 586–9507. E-mail: *Francine.Pinto@hq.doe.gov* or *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background and Authority

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part B of Title III establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' (42 U.S.C. 6291–6309) This notice involves residential products under Part B, and the statute specifically includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers.

With respect to test procedures, Part B generally authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

Relevant to the current Petition for Waiver, the test procedures for residential central air conditioners and central air conditioning heat pumps are set forth in 10 CFR Part 430, Subpart B, Appendix M. Section 323 of EPCA provides that the Secretary of Energy may amend test procedures for consumer products if the Secretary determines that amended test procedures would more accurately reflect energy efficiency, energy use or estimated annual operating costs, and are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(1)(A) and (b)(3))

DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered products, for which the petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers generally remain in effect until final test procedure amendments become effective, thereby resolving the problem that instigated the Petition for Waiver. 10 CFR 430.27(m).

The waiver process also permits parties petitioning DOE for a waiver to apply for an Interim Waiver from the prescribed test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an Interim Waiver request if it is determined that the applicant will experience economic hardship if the Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. 10 CFR 430.27(g). An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary. 10 CFR 430.27(h).

II. Petition for Waiver

On December 9, 2005, Daikin filed a Petition for Waiver from the test procedures applicable to residential and commercial package air conditioning and heating equipment and an Application for Interim Waiver. The applicable test procedure for Daikin's residential VRV–II–S products is the DOE residential test procedure found in 10 CFR Part 430, Subpart B, Appendix M. For Daikin's commercial VRV–II–S products, the applicable test procedure is also the residential test procedure found in Appendix M, because the same test is used for single-phase products with capacities less than 65,000 Btu/h.

Daikin seeks a waiver from the DOE test procedures on the grounds that the VRV–II–S Series multi-split heat pump and heat recovery systems contain design characteristics that prevent testing according to the current DOE test procedures. Specifically, Daikin asserts that the two primary factors that prevent testing of multi-split variable speed products, regardless of manufacturer, are the same factors stated in the waiver that DOE granted to Mitsubishi Electric & Electronics USA, Inc. (Mitsubishi) for a similar line of commercial multi-splits:

- Testing laboratories cannot test products with so many indoor units.
- There are too many possible combinations of indoor and outdoor units to test. 69 FR 52660, 52661 (August 27, 2004).

Further, Daikin states that although the VRV–II–S product line fits within the scope of the applicable DOE residential test procedure, the basic design is not commensurate with the intent of the test procedures for the reasons that follow. In particular, the test procedure does not provide for:

- The test procedure for a split system requires testing a combination of paired indoor and outdoor unit assemblies, but it does not include provisions for how the Daikin VRV–II–S product, with its thousands of indoor unit combinations, should be evaluated with just one outdoor unit test.
- The test procedure requires testing matched assemblies, but the Daikin VRV–II–S product is designed to be used in zoned systems where the capacity of the indoor units installed does not necessarily match the capacity of the outdoor unit.
- The Daikin VRV–II–S products are intended to be used in zoned systems where an outdoor unit can be connected with up to nine separated indoor units. Moreover, Daikin offers 83 indoor unit models. Each indoor unit is designed to be used with up to eight other indoor units, which may not be the same models, in combination with a single outdoor unit. Consequently, for each VRV–II–S outdoor unit, there could be thousands of possible combinations of indoor units that could be matched in a system configuration.

Accordingly, Daikin requests that DOE grant a test procedure waiver for its VRV–II–S product designs, until a suitable test method can be prescribed. Furthermore, Daikin states that failure to grant the waiver would result in economic hardship because it would prevent the company from marketing its VRV–II–S products. Also, Daikin states that it is willing to work closely with DOE, the Air-Conditioning and Refrigeration Institute (ARI), and other agencies to develop appropriate test procedures, as necessary.

III. Application for Interim Waiver

On December 9, 2005, in addition to its Petition for Waiver, Daikin submitted to DOE an Application for Interim Waiver. Daikin's Application for Interim Waiver does not provide sufficient information to evaluate the level of economic hardship Daikin will likely experience if its Application for Interim Waiver is denied. However, in those instances where the likely success of the

Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis. DOE has previously granted Interim Waivers to Fujitsu and Samsung for comparable residential and commercial multi-split air conditioners and heat pumps. 70 FR 5980 (Feb. 4, 2005); 70 FR 9629 (Feb. 28, 2005), respectively. In addition, as noted above, DOE approved the Petition for Waiver from Mitsubishi for its comparable line of commercial multi-split air conditioners and heat pumps. 69 FR 52660 (August 27, 2004). The two prevailing reasons for granting these waivers also apply to Daikin's VRV–II–S products: (1) Test laboratories cannot test products with so many indoor units[2]; and (2) it is impractical to test so many combinations of indoor units with each outdoor unit. Thus, DOE has determined that it is likely that Daikin's Petition for Waiver will be granted for its new VRV–II–S multi-split models. Hence, *It is ordered that:*

The Application for Interim Waiver filed by Daikin is hereby granted for Daikin's VRV–II–S multi-split central air conditioners and central air conditioning heat pumps, subject to the specifications and conditions below. The Interim Waiver applies to the following models:

1. Daikin shall not be required to test or rate its VRV–II–S residential products on the basis of the currently applicable test procedure, which is set forth in 10 CFR Part 430, Subpart B, Appendix M; and

2. Daikin shall be required to test and rate its VRV–II–S products according to the alternate test procedure as set forth in section IV(3), ''Alternate test procedure.''

Outdoor Units, Heat Pump-type

• RXYM4MVMT: 38,200 Btu/h cooling/ 42,600 Btu/h heating, single phase, 220 volts, 60 Hz
• RXYM5MVMT: 47,700 Btu/h cooling/ 54,600 Btu/h heating, single phase, 220 volts, 60 Hz
• RXYM6MVMT: 52,900 Btu/h cooling/ 61,400 Btu/h heating, single phase, 220 volts, 60 Hz

Indoor units

• FXC series, ceiling mounted cassette (double flow) type, FXC 20/25/32/40/50/63/80/125
• FXF series, ceiling mounted cassette (multi flow) type, FXF 25/32/40/50/63/80/100/125
• FXK series, ceiling mounted cassette (corner) type, FXK 25/32/40/63
• FXD series, slim above ceiling mounted ducted type, FXD 20/25/32/40/50/63
• FXYD series, low silhouette above ceiling mounted ducted type, FXYD 20/25/32/40/50 /63
• FXS series, built-in above ceiling mounted ducted type, FXS 20/25/32/40/50/63/80/100 /125
• FXM series, above ceiling mounted ducted type, FXM 40/50/63/80/100/125
• FXH series, ceiling suspended type, FXH 32/63/100
• FXA series, wall mounted type, FXA 20/25/32/40/50/63
• FXL series, floor standing console type, FXL 20/25/32/40/50/63
• FXN series, floor standing concealed type, FXN 20/25/32/40/50/63

This Interim Waiver is conditioned upon the presumed validity of statements, representations, and documentary materials provided by the petitioner. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Petition for Waiver is incorrect, or DOE determines that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

IV. Alternate Test Procedure

In response to two recent Petitions for Waiver from Mitsubishi, DOE specified an alternate test procedure to provide a basis from which Mitsubishi could test and make valid energy efficiency representations for its R410A CITY MULTI products, as well as for its R22 multi-split products. The Mitsubishi petitions, including the alternate test procedure, were published in the **Federal Register** on April 9, 2007. 72 FR 17528, 17532. For similar reasons, DOE believes that alternate test procedures are necessary here.

In general, DOE understands that existing testing facilities have a limited ability to test multiple indoor units at one time, and the number of possible combinations of indoor and outdoor units for some variable refrigerant flow zoned systems is impractical to test. We further note that subsequent to the waiver that DOE granted for Mitsubishi's R22 multi-split products, ARI formed a committee to discuss this issue and to work on developing an appropriate testing protocol for variable refrigerant flow systems. However, to date, no additional test methodologies have been adopted by the committee or submitted to DOE.

Therefore, as discussed below, DOE is including an alternate test procedure as a condition in granting the Interim Waiver for Daikin's products, and plans to consider the same alternate test procedure in the context of the subsequent Decision and Order pertaining to Daikin's Petition for Waiver. Utilization of this alternative test procedure will allow Daikin to test and make energy efficiency representations for its VRV–II–S products. More broadly, DOE is also considering applying a similar alternate test procedure to other existing waivers for similar residential and commercial central air conditioners and heat pumps. Such cases include Samsung's Petition for Waiver for its multi-split products at 70 FR 9629 (Feb. 28, 2005), and Fujitsu's Petition for Waiver for its multi-split products at 70 FR 5980 (Feb. 4, 2005). Similarly, DOE is considering use of this alternate test procedure for other products of this type for which manufacturers seek waivers, until such time as the DOE test procedure has been updated appropriately.

In the present case, DOE is modifying the alternate test procedure in the above-referenced waiver granted to Mitsubishi for the R410A CITY MULTI products, and plans to consider inclusion of the following similar waiver language in the Decision and Order for Daikin's VRV–II–S multi-split air conditioner and heat pump models:

(1) The ''Petition for Waiver'' filed by Daikin U.S. Corporation (Daikin) is hereby granted as set forth in the paragraphs below.

(2) Daikin shall not be required to test or rate its variable refrigerant volume multi-split air conditioner and heat pump products listed in section III, above, on the basis of the currently applicable test procedure, but shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

(3) *Alternate test procedure.*

(A) Daikin shall be required to test the products listed above according to the test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR part 430, except that:

(i) Daikin shall not be required to comply with: The first sentence in 10 CFR 430.24(m)(2), which refers to ''that combination manufactured by the condensing unit manufacturer likely to have the largest volume of retail sales;'' and the third sentence in 10 CFR 430(m)(2), including the provisions of 10 CFR 430(m)(2)(i) and (ii). Instead of testing the combinations likely to have the highest volume of retail sales,

[2] According to the Daikin petition, up to 17 indoor units are possible candidates for testing of its commercial multi-split air conditioners and heat pumps. However, DOE believes that the practical limits for testing would be about five units.

Daikin may test a ''tested combination'' selected in accordance with the provisions of subparagraph (B) of this paragraph. Additionally, instead of following the provisions of 10 CFR 430(m)(2)(i) and (ii) for every other system combination using the same outdoor unit as the tested combination, Daikin shall make representations concerning the VRV–II–S products covered in this waiver according to the provisions of subparagraph (C) below.

(ii) Daikin shall be required to comply with 10 CFR 430 Appendix M as amended in accordance with designated changes that are listed in the July 20, 2006 **Federal Register** notice. 71 FR 41320. These designated changes are with respect to the following test procedure sections: 2.1, 2.2.3, 2.4.1, 3.2.4 (including Table 6), 3.6.4 (including Table 12), 4.1.4.2, and 4.2.4.2.

(B) *Tested combination.* The term ''tested combination'' means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(i) The basic model of a variable refrigerant volume system used as a tested combination shall consist of an outdoor unit that is matched with between two and five indoor units.

(ii) The indoor units shall:

(a) Represent the highest sales volume type models;

(b) Together, have a capacity between 95 percent and 105 percent of the capacity of the outdoor unit;

(c) Not, individually, have a capacity greater than 50 percent of the capacity of the outdoor unit;

(d) Have a fan speed that is consistent with the manufacturer's specifications; and

(e) All have the same external static pressure.

(C) *Representations.* Daikin may make representations about the energy efficiency of its variable refrigerant volume multi-split air conditioner and heat pump products, for compliance, marketing, or other purposes, only to the extent that such representations are made consistent with the provisions outlined below:

(i) For multi-split combinations tested in accordance with this paragraph, Daikin may make representations based on these test results.

(ii) For multi-split combinations that are not tested, Daikin may make representations which are based on the testing results for the tested combination and which are consistent with either of the two following methods, except that only method (a) may be used, if available:

(a) Representation of non-tested combinations according to an alternative rating method approved by DOE; or

(b) Representation of non-tested combinations at the same energy efficiency level as the tested combination with the same outdoor unit.

V. Summary and Request for Comments

Through today's notice, DOE announces receipt of Daikin's Petition for Waiver from the test procedures applicable to Daikin's VRV–II–S multi-split air conditioner and heat pump products, and for the reasons articulated above, DOE is granting Daikin an Interim Waiver from those procedures. As part of this notice, DOE is publishing Daikin's Petition for Waiver in its entirety. The Petition contains no confidential information. Furthermore, today's notice includes an alternate test procedure that Daikin is required to follow as a condition of the Interim Waiver and which DOE is considering including in its subsequent Decision and Order. In this alternate test procedure, DOE is defining a ''tested combination'' which Daikin could use in lieu of testing all retail combinations of its VRV–II–S multi-split air conditioner and heat pump products.

Furthermore, should a subsequent manufacturer be unable to test all retail combinations, DOE is considering allowing such manufacturers to rate waived products according to an alternate rating method approved by DOE, or to rate waived products the same as that for the specified tested combination. DOE is also considering applying a similar alternate test procedure to other comparable Petitions for Waiver for residential and commercial central air conditioners and heat pumps. Such cases include Samsung's Petition for Waiver for its DVM products at 70 FR 9629 (Feb. 28, 2005), and Fujitsu's Petition for Waiver for its Airstage variable refrigerant flow products at 70 FR 5980 (Feb. 4, 2005).

DOE is interested in receiving comments on the issues addressed in this notice. Pursuant to 10 CFR 430.27(d), any person submitting written comments must also send a copy of such comments to the petitioner, whose contact information is included in the **ADDRESSES** section above.

Issued in Washington, DC, on September 4, 2007.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

December 13, 2005

Hon. Douglas Faulkner, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, Department of Energy 1000 Independence Ave., SW., Washington, DC.

Re: Petition for Waiver of Test Procedures and Application for Interim Waiver for Daikin's ''VRV–II–S'' variable refrigerant volume multi-split heat pumps

Dear Assistant Secretary Faulkner: Daikin U.S. Corporation (DUS) respectfully submits this document as our Petition for Waiver of Test Procedure and Application for Interim Waiver of Test Procedure applicable to our VRV–II–S product offering to the Department of Energy (DOE) for review and approval. This petition is submitted pursuant to the provisions of 10 CFR 431.29 on the grounds that the basic models addressed herein contain design characteristics which prevent testing according to prescribed procedures. This petition is being requested specifically for Daikin's VRV–II–S multi-split heat pump system incorporating variable speed compressor technology, variable refrigerant flow and multiple zoning capabilities.

There are two primary factors that prevent the testing of multi-split variable speed product regardless of manufacturer which are:

- Testing laboratories cannot test products with so many indoor units.
- There are too many possible combinations of indoor and outdoor units to test.

The existing test standard that most closely relates to such product is ARI 210/240 (2003).

I. Background

Daikin Industries Limited is a leading manufacturer of variable speed and Variable Refrigerant Volume (VRV) zoning systems which are offered for sale by DUS in the North American market. These products combine advanced technologies such as high efficiency variable speed compressors and fan motors along with electronic expansion valves and other devices to insure peak operating performance of the overall system. The systems are applied in both commercial and residential applications whereas zoning is applied to provide users with peak utility of the system and energy savings. The capacity of this DUS product offering ranges from 38,200 BTU/Hr to 52,900 BTU/Hr.

Our product offering (VRV–II–S) shares many of the same design and characteristic features as that of the City Multi product manufactured and distributed by Mitsubishi Electric and Electronics USA, Inc. (MEUS), of which DOE has granted a waiver as described in the Federal Register/Vol. 69, No. 166/ Friday, August 27, 2004/Notices, page 52,660. DOE granted MEUS' petition for waiver on the basis that (1) testing laboratories cannot test products with so many indoor units, and (2) there are too many possible combinations of indoor and outdoor units to test, therefore preventing testing of the basic models according to prescribed test procedures. The VRV–II–S also shares many of the same design characteristics as that of the DVM product offered by Samsung Air Conditioning, of which DOE granted an interim waiver on February 28, 2005.

An additional problem that prevents testing is the wide variety of indoor unit static pressure ratings available with these and other multi-split products. Testing facilities cannot effectively control multiple indoor static pressures that would be required with many of the indoor unit combinations available. To accomplish such testing a large number of test rooms would need to be utilized simultaneously, networked with data recording instrumentation and extensive piping configurations would need to be routed throughout the various test rooms. Obviously this process would be cost and time prohibitive.

Daikin's VRV–II–S product offering consists of multiple indoor units being connected to an outdoor unit. Indoor units for these products are available in Ducted (with many different indoor static pressure ratings as standard), 4-Way Cassette, Wall Mounted, Ceiling Suspended, Floor Standing and other models. There are thousands of possible combinations with this current product offering.

II. Design Characteristics

Daikin developed the ''VRV–II–S'' to respond to the needs of a truly energy efficient, easy to design and install air conditioning system that is also flexible, reliable and user friendly and capable to provide real zoning to residences, small offices and shops. Daikin has incorporated comprehensive cutting-edge technologies into the ''VRV–II–S,'' and the results are quieter operation, smaller units, and simpler maintenance with higher efficiencies.

These compact 38,200 (4 HP); 47,700 (5 HP) and 52,900 (6 HP) BTU/h Variable Refrigerant Volume (VRV) multi-split systems consist of one outdoor unit, using a Reluctance DC scroll compressor with a sine wave DC inverter with truly variable refrigerant volume capacity serving multiple indoor units through a single piping set of gas and liquid lines and using headers or 'Refnets' for refrigerant distribution and electronic expansion valves.

The ''VRV–II–S'' system enables a single outdoor unit to connects with up to 6 indoor units for the 4HP model; with up to 8 indoor units for the 5 HP model and with up to 9 indoor units for the 6 HP model.

The indoor units can be selected from 13 types with 83 models (included in item IV of this application), giving these systems thousands of possible installation combinations. The operation control system allows each indoor unit to have different set temperatures and different modes of operation.

The Reluctance DC scroll compressor and the sine wave inverter maintain compressor operation at optimum performance allowing it to precisely match the cooling or heating load demand of the conditioned areas. The Reluctance DC scroll compressor is capable of slowing down to an operating capacity as little as 30% of its rated capacity and accelerating to up to 150% of its rated capacity allowing ti to install up to 130% indoor unit capacity to the outdoor unit capacity.

Grounds for the Petition

Daikin seeks a waiver from the test procedures applicable to central air conditioners and heat pumps under Title III of the Energy Policy and Conservation Act (EPCA), Part B of Title III (42 U.S.C. 6291–6309) Energy Conservation Program for Consumer Products other than Automobiles and 10 CFR 430 Energy Conservation Program for Consumer Products and Part C of Title III (42 U.S.C. 6311–6317) Energy Efficiency of Industrial Equipment and 10 CFR 431 Energy Efficiency Program for Certain Commercial and Industrial Equipment.

In particular, Daikin seeks a waiver from the currently applicable test procedure provided in 10 CFR 430.23(m) central air conditioners and heat pumps and 10 CFR 430, Appendix M to Subpart B Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps.

III. Specific Requirements Sought to be Waived and the Need for the Waiver

Daikin seeks a waiver from the applicable test procedures for ''VRV–II–S,'' because the current test procedures would evaluate ''VRV–II–S'' in a manner completely unrepresentative of its true energy consumption as to provide materially inaccurate competitive data. Below are the details of the two main reasons:

(1) Specified test procedures for a split system call for testing a combination of paired indoor and outdoor unit assemblies for typical split systems to be tested together, but it does not include provisions on how the ''VRV–II–S'' with thousands of indoor unit combinations is to be evaluated with just one outdoor unit test.

Test procedures for typical multi-split central air conditioning and heat pump systems (a combination of one outdoor unit and up to five indoor units) calls for all the indoor units operating at full capacity. This type of test, even though limited, can be impractical for these types of products since it is possible to match a defined standard combination of indoor units to one outdoor unit. ''VRV-II-S'' does not have a standard representative combination of outdoor and indoor units for testing.

''VRV–II–S'' products are intended to be used in zoning systems where an outdoor unit can be connected from up to 9 separated indoor units in a zoned system. Moreover, we offer 83 indoor unit models. Each of these indoor unit models is designed to be used together with up to 8 other indoor units, which may not be the same models, in combination with a single outdoor unit. In other words, for each ''VRV–II–S'' outdoor unit there are thousands of possible combinations of indoor units that can be matched in a system configuration.

The current test procedure provides no direction for determining what combinations of outdoor unit and indoor units shall be tested for a variable refrigerant volume system. While a test procedure using a given number of indoor units (4, 5, 6 or more) whose total capacity matches that of the outdoor unit may be considered, the results will not entirely represent the system's true energy consumption characteristics. Because such a test procedure sets a condition to the ratings based on one test combination among thousands of possible combinations, they do not represent all system combinations and consumers may misread true energy consumption if their system configuration differs from the tested configuration.

At the same time, it will be unduly burdensome for us to conduct tests of each possible combination and extremely impracticable. Therefore, the test procedure does not contemplate, and cannot practically be applied to Daikin's ''VRV–II–S'' consisting of multiple assemblies that are intended to be used in a very large number of different combinations.

(2) The test procedure calls for testing 'matched assemblies,' but ''VRV–II–S'' is designed to be used in zoning systems where the capacity of the indoor units installed does not necessarily match the capacity of the outdoor unit. In a typical split system the indoor and outdoor units are balanced and the capacity of the outdoor unit is equivalent to the capacity of the indoor unit. However, with ''VRV–II–S'' the sum of the capacity of the indoor units can be from 50% to 130% of the capacity of the outdoor unit. Such imbalanced combination of indoor units and outdoor units are possible because of the zoning and electronic controls characteristics of the system. For example, the use of electronic controls, electronic expansion valves and inverter driven scroll compressors allow the system to precisely control the volume of refrigerant needed in each of the indoor units in accordance with the particular load and set points of that indoor unit. This is possible because of the advanced control system utilizing digital communication between all the components of the system for overall system control. The test procedure specified in 10 CFR 430.23(m) is for matched assemblies and does not address testing for substantially unbalanced systems.

For these reasons, the existing test procedures would evaluate ''VRV–II–S'' in a manner so unrepresentative of its true energy consumption as to result in materially inaccurate competitive data.

It was only recently that variable refrigerant volume systems were introduced into the United States market. Previous and current test procedures have not been developed for these products that would reflect their real energy consumption and their extraordinary efficiency as of this date. But, without a waiver of the test procedures for variable refrigerant volume systems like ''VRV–II–S,'' we will be at a competitive disadvantage in the market and consumers will be deprived of using this remarkably efficient technology.

In accordance with 42 U.S.C. 6293(c) and 42 U.S.C. 6314(d) of EPCA if there is an acceptable test procedure for a covered product, the manufacturer is prohibited from making representations about the energy consumption of its equipment unless the equipment has been tested in accordance with such test procedures and the representation fairly discloses the result of the testing. Therefore Daikin is at a disadvantage in our ability to provide information on energy consumption of the ''VRV–II–S'' to our customers.

IV. Identification of the Basic Models

Daikin seeks a waiver from the test procedures for ''VRV-II-S,'' variable refrigerant volume multi-split heat pump systems, listed below:

Outdoor unit, Heat Pump type

- RXYM4MVMT; 38,200 BTU/h cooling/42,600 BTU/h heating, single phase, 220 Volts, 60 Hz
- RXYM5MVMT; 47,700 BTU/h cooling/54,600 BTU/h heating, single phase, 220 Volts, 60 Hz
- RXYM6MVMT; 52,900 BTU/h cooling/61,400 BTU/h heating, single phase, 220 Volts, 60 Hz

Indoor units

- FXC series, Ceiling mounted cassette (double flow) type, FXC 20/25/32/40/50/63/80/125
- FXF series, Ceiling mounted cassette (multi flow) type, FXF 25/32/40/50/63/80/100/125
- FXK series, Ceiling mounted cassette (corner) type, FXK 25/32/40/63
- FXD series, Slim above ceiling mounted ducted type, FXD 20/25/32/40/50/63
- FXYD series, Low silhouette above ceiling mounted ducted type, FXYD 20/25/32/40/50/63
- FXS series, Built-in above ceiling mounted ducted type, FXS 20/25/32/40/50/63/80/100/125
- FXM series, Above ceiling mounted ducted type, FXM 40/50/63/80/100/125
- FXH series, Ceiling suspended type, FXH 32/63/100
- FXA series, Wall mounted type, FXA 20/25/32/40/50/63
- FXL series, Floor standing console type, FXL 20/25/32/40/50/63
- FXN series, Floor standing concealed type, FXN 20/25/32/40/50/63

Note: All the above series have engineering differences among the series.

IV. Identification of the Manufacturers of All Other Basic Models

At the present time Variable refrigerant volume (flow) multi-split air conditioning and heat pumps are proposed in the United States by Mitsubishi Electric and Electronics USA Inc., Samsung Electronic Company, Ltd. and Fujitsu General Limited, the first two companies apply most of their products to commercial and industrial use; Fujitsu's ''Airstage'' system is applied in residential and commercial use. (Fujitsu filed FR Doc. 05–2184 on 2–3–05 for a waiver for a similar product)

V. Alternate Test Procedures

There are no alternative test procedures available within the United States that provide a means to test and to rate the performance of such variable speed, multi-split, multi-zone product types. The Engineering Committee of ARI's Ductless Section is actively working to evaluate and develop possible methods to provide testing and rating of such systems. Daikin is involved in this project in an effort to speed the process.

VI. Manufacturers of Similar Models Incorporating the Same Design Characteristics

Manufacturers of similar product within the United States market are:

- Samsung Electronics Co., Ltd.
- Sanyo Fisher (USA) Corp.
- Mitsubishi Electric & Electronics USA, Inc.
- Fujitsu General America
- LG Electronics USA, Inc.

VII. Application for Interim Waiver

Under the direction of 10 CFR 431.29, Daikin U.S. Corporation also submits this document as an Application for Interim Waiver of Test Procedures applicable to the VRV–II–S models as listed previously. Such approval of Interim Waiver will provide Daikin with an opportunity to compete in the market during which time DOE reviews our Petition for Waiver of Test Procedure for the VRV–II–S product.

Daikin U.S. believes that there is a high likelihood of success that our Petition for Waiver will be approved based on the grounds that DOE has issued a Waiver from Test Standards for product that is very similar in design and operation to that of the VRV–II–S product. Such approvals are evidenced as follows:

- DOE has issued a Waiver from Test Standards for product of very similar characteristics:
  - City Multi product marketed by Mitsubishi Electric & Electronics USA, Inc., as approved in the **Federal Register**/Vol. 69, No. 166/Friday, August 27, 2004/Notices, page 52,660.
- DOE has issued an Interim Waiver from Test procedures to Samsung on February 28, 2005.
- Testing laboratories cannot test products with so many indoor units.
- There are too many possible combinations of indoor and outdoor units to test.

Failure to approve such Interim Waiver from Test Procedure will inhibit Daikin's ability to compete in the marketplace even though our VRV–II–S product has the same basic design characteristics as that of other manufacturers currently under waiver. The VRV–II–S models, for which this Interim Waiver is requested, comprise a significant portion of our total product offering. An inability to market such products would result in an economic hardship due to lost revenue and breadth of product offering available to attract customers.

VIII. Conclusion

Daikin seeks a waiver of current test procedures established in 10 CFR 430.23(m) Central Air Conditioners and Heat Pumps (including the new version published in the **Federal Register** dated October 11, 2005 [Docket No. EE–RM/TP–97–440] RIN 1904–AA46) and 10 CFR 430.27 Appendix M to Subpart B Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps for Residential Uses and ARI 210/240 (1989), ARI 210/240 (1994) and ARI 210/240 (2003) for commercial uses.

This is necessary because the test procedures in use and approved evaluate the basic models in a manner that is not representative of the true energy consumption characteristics of the ''VRV–II–S.'' Using such test methods as those outlined in ARI 210/240 will result in materially inaccurate competitive data.

As ruled in the **Federal Register** (page 52,660, Vol. 69, no. 166/Friday, August 27, 2004/Notices) DOE has previously concluded that the testing of product with the same design characteristics of Daikin's VRV–II–S product is not feasible under currently established test methods as a result of:

- ''Test laboratories cannot test products with so many indoor units''
- ''And there are too many possible combinations of indoor and outdoor units to test.''

Daikin U.S. Corporation respectfully asks the Department of Energy to recognize the technologies incorporated into this advanced heating and cooling product and allow us to market such product by granting our request for waiver. Daikin will work with stakeholders, U.S. Department of Energy, Air Conditioning and Refrigeration Institute, the American Society of Heating, Refrigeration and Air-Conditioning Engineers, Inc. and others, through the process of developing test procedures suitable for products using variable refrigerant volume (flow) systems.

Failure to receive such waiver or exemption from test standards would prevent Daikin U.S. from marketing our products even though DOE has previously granted waiver for other products currently in the market with similar design characteristics.

We would be pleased to respond to any questions you may have regarding this Petition for Waiver of Test Procedure. Please direct such questions or comments to Raul Esparza, Vice President of Latin American Operations at 305–596–4344 or by email at *raul.esparza@daikinac.com.*

Sincerely,

Yoshinobu Inoue,

President, Daikin U.S. Corporation, 475 Fifth Avenue, 18th Floor, New York, NY 10017.

[FR Doc. E7–18340 Filed 9–17–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket No. EERE–2007–BT–WAV–0011]

Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver From LG Electronics and Granting of the Application for Interim Waiver From the Department of Energy Residential Central Air Conditioner and Heat Pump Test Procedure [Case No. CAC–014]

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Petition for Waiver, granting of Application for Interim Waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes a Petition for Waiver from LG Electronics USA, Inc. (LG). This Petition for Waiver (hereafter ''LG Petition'') requests a waiver of the Department of Energy (DOE) test procedures applicable to residential central air conditioners and heat pumps. The waiver request is specific to LG's variable refrigerant flow multi-split heat pumps. Through this document, DOE is: (1) Soliciting comments, data, and information with respect to the LG Petition; and (2) granting an Interim Waiver to LG from the DOE test procedure for residential central air conditioners and heat pumps.

DATES: DOE will accept comments, data, and information with respect to the LG Petition until, but no later than October 18, 2007.

ADDRESSES: You may submit comments, identified by case number CAC–014, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: Michael.Raymond@ee.doe.gov*. Include either ''case number CAC–014,'' and/or ''LG Petition'' in the subject line of the message.
- *Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.

Instructions: All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting the signed original paper document. DOE does not accept telefacsimiles (faxes).

Any person submitting written comments must also send a copy of such comments to the petitioner, pursuant to 10 CFR 430.27(d). The contact information for the petitioner is: Mr. Richard Donner, Product Planning Manager, North America Product Planning Group, LG Electronics USA, Inc., 2000 Millbrook Drive, Lincolnshire, IL 60069. Telephone: (201) 906–9878. Fax: (847) 941–8340. E-mail: *rdonner@lge.com.*

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Docket: For access to the docket to review the documents relevant to this matter, you may visit the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the Petition for Waiver and Application for Interim Waiver; and (4) prior DOE rulemakings regarding central air conditioners and heat pumps. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room. Please note that DOE's Freedom of Information Reading Room (Room 1E–190 at the Forrestal Building) is no longer housing rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. E-mail: *Michael.Raymond@ee.doe.gov.*

Francine Pinto or Eric Stas, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. Telephone: (202) 586–9507. E-mail: *Francine.Pinto@hq.doe.gov or Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background and Authority

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part B of Title III establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' (42 U.S.C. 6291–6309) This notice involves residential products under Part B, and the statute specifically includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers.

With respect to test procedures, Part B generally authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use, and estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

Relevant to the current Petition for Waiver, the test procedures for residential central air conditioners and central air-conditioning heat pumps are set forth in 10 CFR Part 430, Subpart B, Appendix M. Section 323 of EPCA provides that the Secretary of Energy may amend test procedures for consumer products if the Secretary determines that amended test procedures would more accurately reflect energy efficiency, energy use or estimated annual operating costs, and are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(1)(A) and (b)(3))

DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered products, for which the petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers generally remain in effect until final test procedure amendments become effective, thereby resolving the problem that instigated the Petition for Waiver. 10 CFR 430.27(m).

The waiver process also permits parties petitioning DOE for a waiver to apply for an Interim Waiver from the prescribed test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an Interim Waiver request if it is determined that the applicant will experience economic hardship if the Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. 10 CFR 430.27(g). An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary. 10 CFR 430.27(h).

II. Petition for Waiver

On December 28, 2005, LG filed a Petition for Waiver from the test procedures applicable to residential central air conditioners and central air-conditioning heat pumps and an Application for Interim Waiver, related to numerous models listed in Appendix A of LG's petition. The applicable test procedure for LG's residential products is the DOE residential test procedure found in 10 CFR Part 430, Subpart B, Appendix M.

LG seeks a waiver from the DOE test procedure because, LG asserts, its line of variable refrigerant flow multi-split air conditioners and heat pumps would be evaluated in a manner unrepresentative of their true energy consumption characteristics. According to LG, such evaluation under the existing test procedure would ''provide materially inaccurate comparative data,'' due in part to potential barriers arising from ''design characteristics that prevent testing of the basic models according to the prescribed test procedures.'' As described below, the primary problem is the large number of combinations of indoor and outdoor units potentially subject to testing.

By way of background, an LG multi-split product consists of one outdoor unit, using a scroll or rotary type compressor with variable capacity, which can connect to multiple indoor units and that uses variable refrigerant flow and control systems. The multi-split product is intended to be used in zoned systems where an outdoor unit can be connected with up to eight separate indoor units, which need not be the same models. These operating characteristics allow each indoor unit to have a different set temperature and a different mode of operation (i.e., on/off/fan). All the indoor units are capable of operating independently, each with its own temperature and fan setting. Subject to these controls, the outdoor unit will determine the cooling or heating capacity delivered into the zones. LG offers 70 indoor models (35 heat pump-type indoor units and 35 cooling-only type indoor units) and 40 outdoor models (20 heat pump-type indoor units and 20 cooling-only type indoor units). Each central air conditioner outdoor unit can be matched with up to 35 different cooling-only indoor units. Likewise, each central air-conditioning heat pump outdoor unit can be matched with up to 35 heat pump indoor units. Further, an outdoor unit can be connected with up to eight separate indoor units. Thus, for each outdoor unit, there are many possible combinations of indoor units that can be used in a system configuration, and given that there are 40 outdoor units, LG argues that it would be impractical to test the multitude of possible combinations for the LG multi-split line of products.

Accordingly, LG requests that DOE grant a test procedure waiver for its variable refrigerant flow multi-split product designs until a suitable test method can be prescribed. Furthermore, LG states that failure to grant the waiver would result in economic hardship because it would prevent the company from marketing its variable refrigerant flow multi-split products. Also, LG states that it is willing to work closely with DOE, the Air-Conditioning and Refrigeration Institute (ARI), and other agencies to develop appropriate test procedures, as necessary.

III. Application for Interim Waiver

On December 28, 2005, in addition to its Petition for Waiver, LG submitted to DOE an Application for Interim Waiver. LG's Application for Interim Waiver does not provide sufficient information to evaluate the level of economic hardship LG will likely experience if its Application for Interim Waiver is denied. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis. DOE has previously granted Interim Waivers to Fujitsu and Samsung for comparable residential and commercial multi-split air conditioners and heat pumps. 70 FR 5980 (Feb. 4, 2005); 70 FR 9629 (Feb. 28, 2005), respectively. In addition, DOE approved the Petition for Waiver from Mitsubishi Electric & Electronics USA, Inc. (Mitsubishi) for its comparable line of commercial multi-split air conditioners and heat pumps. 69 FR 52660 (August 27, 2004). The two prevailing reasons for granting these waivers also apply to LG's variable refrigerant flow multi-split products: (1) Test laboratories cannot test products with so many indoor units [1]; and (2) it is impractical to test so many combinations of indoor units with each outdoor unit. Thus, DOE has determined that it is likely that LG's Petition for Waiver will be granted for its new variable refrigerant flow multi-split models. Hence, it is ordered that:

The Application for Interim Waiver filed by LG is hereby granted for LG's new variable refrigerant flow multi-split central air conditioners and central air-conditioning heat pumps, subject to the specifications and conditions below.

1. LG shall not be required to test or rate its variable refrigerant flow multi-split residential products on the basis of the currently applicable test procedure, which is set forth in 10 CFR Part 430, Subpart B, Appendix M; and

2. LG shall be required to test and rate its variable refrigerant flow multi-split products according to the alternate test procedure as set forth in section IV (3), ''Alternate test procedure,'' of today's notice.

The Interim Waiver applies to the following models:

[1] According to the LG petition, up to eight indoor units may be connected to its multi-split air conditioners and heat pumps and would accordingly be possible candidates for testing (out of an even greater number of potential indoor units). However, DOE believes that the practical limits for testing would be about five units.

Heat Pump Type

Indoor Units:

AMNH073LQ*0, AMNH093LQ*0, AMNH093LR*0, AMNH093D4*0, AMNH123LR*0, AMNH183LT*0, AMNH243LT*0, AMNH093DE*0, AMNH073DZ*0, AMNHDU93*0, AMNH123DEM0, AMNH123DU*0, AMNH183D3*0, AMNH243D3*0, AMNH093AP*0, AMNH093AP*1, AMNH123AP*0, AMNH123AP*1, AMNH093TC*0, AMNH123TC*0, AMNH093TE*0, AMNH123TE*0, AMNH183TE*0, AMNH243TF*0, AMNH093BP*0, AMNH123BP*0, AMNH093BT*0, AMNH126BT*0, AMNH183BT*0, AMNH183BH*0, AMNH243BH*0, AMNH093VE*0, AMNH123VE*0, AMNH183VB*0, AMNH243VB*0

Outdoor Units:

A2UW143FA0, A2UW143FA1, A2UW143FA2, A2UW163FA0, A2UW163FA1, A2UW183FA0, A3UW183FA0, A3UW183FA1, A3UW243FA0, A4UW243FA0, A4UW243FA1, A4UW303FA0, A6UW403FA0, A7UW483FA0, A8UW563FA0, A2UH143FA0, A2UH183FA0, A2UH303FA0, A2UH243FA0, A3UH363FA0

Cooling-Only Type

Indoor Units:

AMNC073LQ*0, AMNC093LQ*0, AMNC093LR*0, AMNC093D4A*0, AMNC123LR*0, AMNC183LT*0, AMNC243LT*0, AMNC073DZ*0, AMNC093DU*0, AMNC123DU*0, AMNC123DEM0, AMNC183D3*0, AMNC243D3*0, AMNC093DE*0, AMNC093AP*0, AMNC093AP*1, AMNC123AP*0, AMNC123AP*1, AMNC093TC*0, AMNC123TC*0, AMNC093TE*0, AMNC123TE*0, AMNC183TE*0, AMNC243TF*0, AMNC093BP*0, AMNC123BP*0, AMNC093BT*0, AMNC126BT*0, AMNC183BT*0, AMNC183BH*0, AMNC243BH*0, AMNC093VE*0, AMNC123VE*0, AMNC183VB*0, AMNC243VB*0

Outdoor Units:

A2UQ143FA0, A2UQ143FA1, A2UQ143FA2, A2UQ163FA0, A2UQ163FA1, A2UQ183FA0, A3UQ183FA0, A3UQ183FA1, A3UQ243FA0, A4UQ243FA0, A4UQ243FA1, A4UQ303FA0, A6UQ403FA0, A7UQ483FA0, A8UQ563FA0, A2UC143FA0, A2UC183FA0, A4UC303FA0, A2UC243FA0, A3UC363FA0

This Interim Waiver is conditioned upon the presumed validity of statements, representations, and documentary materials provided by the petitioner. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Petition for Waiver is incorrect, or DOE determines that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

IV. Alternate Test Procedure

In response to two recent Petitions for Waiver from Mitsubishi, DOE specified an alternate test procedure to provide a basis from which Mitsubishi could test and make valid energy efficiency representations for its R410A CITY MULTI products, as well as for its R22 multi-split products. The Mitsubishi Decision and Order, including the alternate test procedure, were published in the **Federal Register** on April 9, 2007. 72 FR 17528, 17531. For similar reasons, DOE believes that alternate test procedures are necessary here.

In general, DOE understands that existing testing facilities have a limited ability to test multiple indoor units at one time, and the number of possible combinations of indoor and outdoor units for some variable refrigerant flow zoned systems is impractical to test. We further note that subsequent to the waiver that DOE granted for Mitsubishi's R–22 multi-split products, ARI formed a committee to discuss this issue and to work on developing an appropriate test protocol for variable refrigerant flow systems. However, to date, no additional test methodologies have been adopted by the committee or submitted to DOE.

Therefore, as discussed below, DOE is including an alternate test procedure as a condition in granting the Interim Waiver for LG's products, and plans to consider the same alternate test procedure in the context of the subsequent Decision and Order pertaining to LG's Petition for Waiver. Utilization of this alternate test procedure will allow LG to test and make energy efficiency representations regarding its above-discussed products. More broadly, DOE is also considering applying a similar alternate test procedure to other existing waivers for similar residential and commercial central air conditioners and heat pumps. Such cases include Samsung's Petition for Waiver for its multi-split products at 70 FR 9629 (Feb. 28, 2005), and Fujitsu's Petition for Waiver for its multi-split products at 70 FR 5980 (Feb. 4, 2005). Similarly, DOE is considering use of this alternate test procedure for other products of this type for which manufacturers seek waivers, until such time as the DOE test procedure has been updated appropriately.

In the present case, DOE is modifying the alternate test procedure in the above-referenced waiver granted to Mitsubishi for the R–410A CITY MULTI products, and plans to consider inclusion of the following similar waiver language in the Decision and Order for LG's variable refrigerant flow multi-split air conditioner and heat pump models:

(1) The ''Petition for Waiver'' filed by LG Electronics USA, Inc. (LG) is hereby granted as set forth in the paragraphs below.

(2) LG shall not be required to test or rate its variable refrigerant flow multi-split air conditioner and heat pump products listed in section III, above, on the basis of the currently applicable test procedure, but shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

(3) *Alternate test procedure.*

(A) LG shall be required to test the products listed above according to the test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR Part 430, except that:

(i) LG shall not be required to comply with: The first sentence in 10 CFR 430.24(m)(2), which refers to ''that combination manufactured by the condensing unit manufacturer likely to have the largest volume of retail sales;'' and the third sentence in 10 CFR 430(m)(2), including the provisions of 10 CFR 430(m)(2)(i) and (ii). Instead of testing the combinations likely to have the highest volume of retail sales, LG may test a ''tested combination'' selected in accordance with the provisions of subparagraph (B) of this paragraph. Additionally, instead of following the provisions of 10 CFR 430(m)(2)(i) and (ii) for every other system combination using the same outdoor unit as the tested combination, LG shall make representations concerning the variable refrigerant flow multi-split products covered in this waiver according to the provisions of subparagraph (C) below.

(ii) LG shall be required to comply with 10 CFR 430 Appendix M as amended in accordance with designated changes that are set forth in the July 20, 2006 **Federal Register** notice. 71 FR 41320. These designated changes are with respect to the following test procedure sections: 2.1, 2.2.3, 2.4.1, 3.2.4 (including Table 6), 3.6.4 (including Table 12), 4.1.4.2, and 4.2.4.2.

(B) *Tested combination.* The term ''tested combination'' means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(i) The basic model of a variable refrigerant flow system used as a tested combination shall consist of an outdoor unit that is matched with between two and five indoor units.

(ii) The indoor units shall:

(a) Represent the highest sales volume type models;

(b) Together, have a capacity between 95 percent and 105 percent of the capacity of the outdoor unit;

(c) Not, individually, have a capacity greater than 50 percent of the capacity of the outdoor unit;

(d) Have a fan speed that is consistent with the manufacturer's specifications; and

(e) All have the same external static pressure.

(C) *Representations.* LG may make representations about the energy efficiency of its variable refrigerant flow multi-split air conditioner and heat pump products, for compliance, marketing, or other purposes, only to the extent that such representations are made consistent with the provisions outlined below:

(i) For multi-split combinations tested in accordance with this paragraph, LG may make representations based on these test results.

(ii) For multi-split combinations that are not tested, LG may make representations which are based on the testing results for the tested combination and which are consistent with either of the two following methods, except that only method (a) may be used, if available:

(a) Representation of non-tested combinations according to an alternative rating method approved by DOE; or

(b) Representation of non-tested combinations at the same energy efficiency level as the tested combination with the same outdoor unit.

V. Summary and Request for Comments

Through today's notice, DOE announces receipt of LG's Petition for Waiver from the test procedures applicable to LG's variable refrigerant flow multi-split air conditioner and heat pump products, and for the reasons articulated above, DOE is granting LG an Interim Waiver from those procedures. As part of this notice, DOE is publishing LG's Petition for Waiver in its entirety. The Petition contains no confidential information. Furthermore, today's notice includes an alternate test procedure that LG is required to follow as a condition of the Interim Waiver and which DOE is considering to include in its subsequent Decision and Order. In this alternate test procedure, DOE is defining a ''tested combination'' which LG could use in lieu of testing all retail combinations of its variable refrigerant flow multi-split air conditioner and heat pump products.

Furthermore, should a subsequent manufacturer be unable to test all retail combinations, DOE is considering allowing such manufacturers to rate waived products according to an alternate rating method approved by DOE, or to rate waived products the same as that for the specified tested combination. DOE is also considering applying a similar alternate test procedure to other comparable Petitions for Waiver for residential and commercial central air conditioners and heat pumps. Such cases include Samsung's Petition for Waiver for its DVM products at 70 FR 9629 (Feb. 28, 2005), and Fujitsu's Petition for Waiver for its Airstage variable refrigerant flow products at 70 FR 5980 (Feb. 4, 2005).

DOE is interested in receiving comments on the issues addressed in this notice. Pursuant to 10 CFR 430.27(d), any person submitting written comments must also send a copy of such comments to the petitioner, whose contact information is included in the **ADDRESSES** section above.

Issued in Washington, DC, on September 4, 2007.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

December 28, 2005

Mr. Douglas L. Faulkner, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, United States Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Re: Petition for Waiver and Application for Interim Waiver, LG Electronics Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps

Dear Mr. Faulkner: LG Electronics, Inc. (LG) submits this Petition for Waiver and Application for Interim Waiver, pursuant to 10 CFR 430.27, for its LG variable refrigerant flow multi-split air conditioners and heat pumps with variable capacity (''multi-splits''). Waiver relief has been granted to Mitsubishi Electric and Samsung Air Conditioning for the same kinds of product. 69 FR 52660 (Aug. 27, 2004) (Mitsubishi; waiver); 70 FR 9629 (Feb. 28, 2005) (Samsung; interim waiver).

LG is a manufacturer of digital appliances, as well as mobile communications, digital displays, and digital media products. Its appliances include air-conditioners, washing machines, clothes dryers, refrigerators, refrigerator-freezers, air cleaners, ovens, microwave ovens, dishwashers, and vacuum cleaners and are sold worldwide, including in the United States. LG's U.S. operations are LG Electronics USA, Inc., with headquarters at 1000 Sylvan Avenue, Englewood Cliffs, NJ 07632 (tel. 201–816–2000). Its worldwide headquarters are located at LG Twin Towers 20, Yoido-dong, Youngdungpo-gu Seoul, Korea 150–721 (tel. 011–82–2–3777–1114) URL: *http://www.LGE.com.* LG's principal brands include LG®, and OEM brands including GE® and Kenmore®. LG's appliances are produced in Korea and Mexico.

LG intends to market multi-splits and requests waiver relief for this product. LG has 70 indoor units and 40 outdoor units for the product. The model numbers are set forth in Appendix A. As shown therein, 35 cooling-only indoor units can be matched with 20 outdoor units, and 35 heat pump indoor units can be matched with the other 20 outdoor units. The electrical rating for this product is 208/230V 60Hz.

An LG multi-split is a beneficial product consisting of one outdoor unit, using a scroll or rotary type compressor with variable capacity, that can connect to multiple indoor units and that uses variable refrigerant flow and control systems. The multi-split is intended to be used in zoning systems where an outdoor unit can be connected with up to 8 separate indoor units in a zoned system, which need not be the same models. The operating characteristics allow each indoor unit to have a different set temperature and a different mode of operation (i.e., on/off/fan). All of the indoor units are capable of operating independently, with their own temperature and fan speed setting. Based on those controls, the outdoor unit will then determine the cooling or heating capacity delivered into the zones. The system therefore offers great flexibility and convenience to the consumer, permitting precise space conditioning control throughout the building, and thus saving energy.

As stated above, 35 cooling-only indoor units can be matched with each related outdoor unit, and 35 heat pump indoor units with each related outdoor unit. And an outdoor unit can be connected with up to 8 separate indoor units. Thus, for each outdoor unit, there are millions of possible combinations of indoor units that can be matched in a system configuration. And since there are 40 outdoor units, there is a total of hundreds of millions of combinations for the LG multi-split line of products.

The variable speed, constant speed or dual compressors and the associated system controls can direct refrigerant flow throughout the system to precisely meet the various heating or cooling loads required in the conditioned areas. The compressor is capable of reducing its operating capacity to as little as 40 percent of its rated capacity. The outdoor fan motor also has a variable speed drive to properly match the outdoor coil to indoor loads. Zone diversity enables the system to have a total connected indoor unit capacity of up to 130 percent of the capacity of the outdoor unit.

A waiver and interim waiver for LG multi-splits are warranted because test procedures under the Energy Policy and Conservation

Act (EPCA), 42 U.S.C. 6291, *et seq.*, evaluate the basic models in a manner so unrepresentative of their true energy consumption characteristics as to provide materially inaccurate comparative data, and/or the basic models contain one or more design characteristics that prevent testing of the basic model according to the prescribed test procedures. In such circumstances a waiver ''will be granted.'' 10 CFR 430.27(l). In that regard:

—The test procedure provides for testing of a pair of indoor and outdoor assemblies making up a typical split system, but does not specify how an LG multi-split system, with literally millions of combinations of indoor units for each outdoor unit, could be evaluated. The situation is further complicated by the fact that there are 40 outdoor units. It is not practical to test each possible combination, and the test procedure provides no alternative rating method for generating efficiency ratings for systems with more than one indoor unit. Thus, the test procedure does not contemplate, and cannot practically be applied to, LG multi-split systems.

—The test procedure provides for testing ''matched assemblies,'' which does not apply to LG multi-split systems. Indoor and outdoor coils in split systems are typically balanced; that is, the capacity of the outdoor coil is equivalent to the capacity of the indoor coil. The test procedure's application to ''matched assemblies'' contemplates such a balance between indoor and outdoor coil capacity. With the LG multi-split systems, however, the sum of the capacity of the indoor units connected into the system can be as much as 130 percent of the capacity of the outdoor coil. Such unbalanced combinations of LG indoor and outdoor units are permitted by the zoning characteristics of the system, the use of electronic expansion valves to precisely control refrigerant flow to each indoor coil, and the system intelligence for overall system control. The test procedure designed for ''matched assemblies'' therefore does not contemplate or address testing for substantially unbalanced zoning systems such as the LG multi-splits.

—The existing test standards do not provide a test method for integrated part load value (IPLV) in the heating mode of a heat pump. Thus, the LG heat pump's part load capability in the heating mode is not accounted for in the test procedure. Due to the constant variation of the system capacity, it is patently inaccurate to rate the unit at its full load capacity or at any other fixed point of capacity when the unit capacity is constantly varying between 10 percent and 100 percent of the rated capacity. Any test method utilized to rate these types of full variable refrigerant flow units should be indicative of the ability of these units to operate at 10%, 20%, 30% * * * 100% of rated capacity as this is the true operation of the unit in the field.

—The existing test procedure does not account for the inherent benefits of eliminating air duct losses in a system, such as LG's, that is ductless.

* * * * *

For all of these reasons, the existing test procedures evaluate the LG multi-splits in a manner so unrepresentative of their true energy consumption characteristics as to provide materially inaccurate comparative data and/or the basic models contain one or more design characteristics that prevent testing of the basic model according to the prescribed test procedures. 10 CFR 430.27. Therefore, DOE should grant a waiver for LG multi-split systems. The waiver should continue until a test procedure can be developed and adopted that will provide the U.S. market with a fair and accurate assessment of the LG system energy consumption and efficiency levels. LG intends to work with DOE, stakeholders, and the Air-Conditioning and Refrigeration Institute (ARI) to develop the appropriate test procedure.

There are no alternative test procedures known to LG that could evaluate these products in a representative manner.

That a waiver is warranted is borne out by the fact that DOE has granted waiver relief to Mitsubishi Electric and Samsung for the same types of product. 69 FR 52660 (Aug. 27, 2004); 69 FR 9629 (Feb. 28, 2005).

Manufacturers of all other basic models marketed in the United States and known to LG to incorporate similar design characteristics as found in the LG multi-splits include Samsung Air Conditioning, Sanyo Fisher (USA) Corp., Fujitsu General Limited, Mitsubishi Electric and Electronics USA, and Mitsubishi Heavy Industries Climate Control, Inc.

LG also requests immediate relief by grant of an interim waiver. Grant of an interim waiver is fully justified:

—The petition for waiver is likely to be granted, as evidenced not only by its merits, but also because DOE has already granted waiver relief to Mitsubishi Electric and Samsung.

—Without a waiver of the test procedure, LG will be at a competitive disadvantage in the market and suffer economic hardship. LG would be placed in an untenable situation: The product would be subject to a set of regulations that DOE already acknowledges should not apply to such a product, while at the same time other manufacturers are allowed to operate relieved from such regulations.

—Significant investment has already been made in LG multi-splits. Lack of relief would not allow LG to recoup this investment and would deny LG anticipated sales revenue. This does not take into account significant losses in goodwill and brand acceptance.

—The basic purpose of EPCA, as amended by the National Appliance Energy Conservation Act, is to foster purchase of energy-efficient appliances, not hinder such purchases. LG multi-splits produce a benefit to consumers and are in the public interest. To encourage and foster the availability of these products is in the public interest. Standards programs should not be used as a means to block innovative, improved designs.[2] DOE's rules should accommodate and encourage—not act to block—such a product.

—Granting the interim waiver and waiver would also eliminate a non-tariff trade barrier.

—Grant of relief would also help enhance economic development and employment, including not only LG Electronics USA's operations in New Jersey, Illinois and Alabama, but also at major national retailers and regional dealers that carry LG products. Furthermore, continued employment creation and ongoing investments in its marketing, sales and servicing activities will be fostered by approval of the interim waiver. Conversely, denial of the requested relief would harm the company and would be anticompetitive.

Conclusion

LG respectfully requests that DOE grant a waiver and interim waiver from existing test standards for LG multi-splits until such time as a representative test procedure is developed and adopted for such products.

We would be pleased to discuss this request with DOE and provide further information as needed.

We hereby certify that all manufacturers of domestically marketed units of the same product type have been notified by letter of this petition and application, copies of which letters are attached (Appendix B).

Sincerely,

Richard Donner, Product Planning Manager, North America Product Planning Group, LG Electronics USA, Inc., 2000 Millbrook Drive, Lincolnshire, IL 60069, Phone: 201–906–9878, Fax: 847–941–8340, E-mail: *rdonner@lge.com.*

John I. Taylor, Vice President, Government Relations, LG Electronics USA, Inc., 1750 K Street, NW., Washington, DC 20006, Phone: 202–719–3490, Fax: 847–941–8177, Email: *jtaylor@lge.com.*

Of Counsel:

John A. Hodges, James T. Bruce, Wiley Rein & Fielding, LLP., 1776 K Street, NW., Washington, DC 20006, Phone: 202–719–7000, Fax: 202–719–7049, E-mail: *jhodges@wrf.com, jbruce@wrf.com.*

Appendix A

Heat Pump

Indoor

AMNH073LQ*0, AMNH093LQ*0, AMNH093LR*0, AMNH093D4*0, AMNH123LR*0, AMNH183LT*0, AMNH243LT*0, AMNH093DE*0, AMNH073DZ*0, AMNH093DU*0, AMNH123DEM0, AMNH123DU*0, AMNH183D3*0, AMNH243D3*0, AMNH093AP*0, AMNH093AP*1, AMNH123AP*0, AMNH123AP*1, AMNH093TC*0, AMNH123TC*0, AMNH093TE*0, AMNH123TE*0, AMNH183TE*0, AMNH243TF*0, AMNH093BP*0, AMNH123BP*0, AMNH093BT*0, AMNH126BT*0, AMNH183BT*0, AMNH183BH*0, AMNH243BH*0, AMNH093VE*0, AMNH123VE*0, AMNH183VB*0, AMNH243VB*0

Outdoor

[2] 2 See FTC Advisory Opinion No. 457, TRRP 1718.20 (1971 Transfer Binder); 49 FR 32213 (Aug. 13, 1984); 52 FR 49141, 49147–48 (Dec. 30, 1987).

A2UW143FA0, A2UW143FA1, A2UW143FA2, A2UW163FA0, A2UW163FA1, A2UW183FA0, A3UW183FA0, A3UW183FA1, A3UW243FA0, A4UW243FA0, A4UW243FA1, A4UW303FA0, A6UW403FA0, A7UW483FA0, A8UW563FA0, A2UH143FA0, A2UH183FA0, A4UH303FA0, A2UH243FA0, A3UH363FA0

Cooling Only

Indoor

AMNC073LQ*0, AMNC093LQ*0, AMNC093LR*0, AMNC093D4A*0, AMNC123LR*0, AMNC183LT*0, AMNC243LT*0, AMNC073DZ*0, AMNC093DU*0, AMNC123DU*0, AMNC123DEM0, AMNC183D3*0, AMNC243D3*0, AMNC093DE*0, AMNC093AP*0, AMNC093AP*1, AMNC123AP*0, AMNC123AP*1, AMNC093TC*0, AMNC123TC*0, AMNC093TE*0, AMNC123TE*0, AMNC183TE*0, AMNC243TF*0, AMNC093BP*0, AMNC123BP*0, AMNC093BT*0, AMNC126BT*0, AMNC183BT*0, AMNC183BH*0, AMNC243BH*0, AMNC093VE*0, AMNC123VE*0, AMNC183VB*0, AMNC243VB*0

Outdoor

A2UQ143FA0, A2UQ143FA1, A2UQ143FA2, A2UQ163FA0, A2UQ163FA1, A2UQ183FA0, A3UQ183FA0, A3UQ183FA1, A3UQ243FA0, A4UQ243FA0, A4UQ243FA1, A4UQ303FA0, A6UQ403FA0, A7UQ483FA0, A8UQ563FA0, A2UC143FA0, A2UC183FA0, A4UC303FA0, A2UC243FA0, A3UC363FA0

Appendix B

Certification

This is to certify that LG Electronics, Inc. has sent by next day delivery a copy of its petition for waiver and application for interim waiver for LG variable refrigerant flow multi-split air conditioners and heat pumps with variable capacity to manufacturers, known to LG, of domestically marketed units of the same product type (as listed in Section 322(a) of the Energy Policy and Conservation Act). The cover letter to each person states that the person may submit comments to DOE.

Attached are the names and addresses of each person to whom a copy of the petition and waiver was sent by next day delivery.

Certified by:

John I. Taylor, Vice President, Government Relations, LG Electronics USA, Inc., Date: December 28, 2005.

December 28, 2005

Re: LG Electronics, Inc. Petition for Waiver and Application for Interim Waiver; Opportunity for Comment

To Whom It May Concern: This is to notify you by next day delivery of LG Electronics Inc.'s enclosed Petition for Waiver and Application for Interim Waiver of the United States Department of Energy (DOE) regulations on energy conservation test procedures. In accordance with DOE rules, we are also advising you of your opportunity to comment to DOE. The Assistant Secretary for Conservation and Renewable Energy will consider timely written comments. Comments are to be submitted to: Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0107.

Pursuant to DOE's rules, please provide us with a copy of any comments.

Sincerely,

John I. Taylor, Vice President, Government Relations, LG Electronics USA, Inc.

Aaon, Inc., 2425 South Yukon, Tulsa, OK 74107–2728, Attn: Jim Parro.

Advanced Distributor Products, Industrial Park Road, Grenada, MS 38901, Attn: Joseph P. Bush.

Allstyle Coil Company, LP, 7037 Brittmore (77041), P.O. Box 40696, Houston, TX 77240–0696, Attn: Robert W. Magee.

American Best, LLC, 1845 W. First Street, Ste. 101, Tempe, AZ 85281–7253, Attn: Daniel H. Burke.

Apex Coil, LLC, 400 Dean Street, P.O. Box 756, Gilmer, TX 75644, Attn: Candice Coscione.

Armstrong Air Conditioning, Inc., 421 Monroe Street, Bellevue, OH 44811, Attn: Bruce R. Maike.

Aspen Manufacturing, Inc., 373 Atascocita Road, Humble, TX 77396, Attn: John McAndrews.

Bard Manufacturing Company, 1914 Randolph Drive, P.O. Box 607, Bryan, OH 43506, Attn: Irvin L. Derks.

Benchmark Manufacturing, Inc., 211 S. Industrial Street, P.O. Box 2170, Lindale, TX 75771, Attn: Steven W. Hallock.

Carrier Corporation, Carrier Parkway, A&R Building, P.O. Box 4808, Syracuse, NY 13221, Attn: John Mandyck.

Compu-Aire, Inc., 8167 Bryon Road, Whittier, CA 90606, Attn: Balbir Narang.

Daikin Industries, Ltd., Nakaz'aki-Nishi Kita-Ku, Osaka 530–8323, JAPAN, Attn: Gary Nettinger.

Eubank Manufacturing Enterprises, Inc., Subsidiary of Fedders Corp., P.O. Box 7938, Longview, TX 75607, Attn: Todd Duckwitz.

Excel Comfort Systems, Inc., 990 Main Street, Blackville, SC 29817, Attn: William E. Dalton.

Firm Group Co., Ltd., 213.215 Moo 9, Luang Pang Road, Tab Yao, Ladkrabang, Bangkok, Thailand, Attn: Suvit Jirapavasuti.

Friedrich Air Conditioning Co., 4200 North Pan Am Expressway, P.O. Box 1540, San Antonio, TX 78295–1540, Attn: Sarup Bakhshi.

Fujitsu General America, 353 Route 46 West, Fairfield, NJ 07004, Attn: Tedd Rozylowicz.

Goodman Manufacturing Corp., 2550 North Loop West, Suite 400, Houston, TX 77092, Attn: Gary Clark.

International Comfort Products, LLC, 650 Heil-Quaker Avenue, Lewisburg, TN 37091, Attn: Halsey Cook.

International Environmental Corp., P.O. Box 2598, Oklahoma City, OK 73101–2598, Attn: Warren Shoulders.

Lennox International Inc., P.O. Box 799900, Dallas, TX 75379–9900, Attn: David F. Lewis.

Magic Aire, 501 Galveston, Wichita Falls, TX 76301, Attn: Steve Wilson.

Mestek, Inc., 260 North Elm Street, Westfield, MA 01085, Attn: Anthony C. Novak.

Mitsubishi Electric & Electronics, USA, Inc. HV AC Products, 4505–A Newpoint Place, Lawrenceville, GA 30043, Attn: Paul Doppel.

Mortex Products, Inc., 501 Terminal Road (76106), P.O. Box 9380, Ft. Worth, TX 76147, Attn: Terrell J. Small.

National Comfort Products, 539 Dunksferry Road, Bensalem, PA 19020–5908, Attn: John Morris.

NORDYNE Inc., 8000 Phoenix Parkway, P.O. Box 8809, O'Fallon, MO 63366–8809, Attn: David J. Lagrand.

Rheem Manufacturing Company, 5600 Old Greenwood Road (72903), P.O. Box 17010, Fort Smith, AR 72917–7010, Attn: Alan F. Kessler.

Samsung Electronics Co., LTO, 416 Maetan3–Dong, Pal-dal-guSuwon Kyungki–Do.442–742, Korea, Attn: Byong-Jim Kong.

Superior Coils, Inc., P.O. Box 24325, Fort Worth, TX 76124, Attn: Deborah H. Hawkins.

Trane, 3600 Pammel Creek Road, La Crosse, WI 54601, Attn: Mike Ray.

Unico, Inc., 7401 Alabama Avenue, Saint Louis, MO 63111, Attn: Craig Messmer.

York International Corporation, 631 South Richland Avenue, P.O. Box 1592, York, PA 17405, Attn: Daniel J. Arnold.

Air-Conditioning and Refrigeration Institute, 4100 North Fairfax Drive, Suite 200, Arlington, VA 22203, Attn: Stephen R. Yurek, Esq.

[FR Doc. E7–18338 Filed 9–17–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 11, 2007.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP05–422–022.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Company submits Thirty-Fourth Revised Sheet 20 *et al.* to FERC Gas Tariff, Second Revised Volume 1–A.

Filed Date: 09/10/2007.

Accession Number: 20070911–0089.

Comment Date: 5 p.m. Eastern Time on Monday, September 24, 2007.

Docket Numbers: RP07–38–003.

Applicants: Eastern Shore Natural Gas Company.

Description: Eastern Shore Natural Gas Company submits Revised Sheets 4, 5, and 6 to FERC Gas Tariff, Second Revised Volume 1, effective 9/1/07.

Filed Date: 09/10/2007.
Accession Number: 20070910–0191.
Comment Date: 5 p.m. Eastern Time on Monday, September 24, 2007.

Docket Numbers: RP07–602–001.
Applicants: Sabine Pipe Line LLC.
Description: Sabine Pipe Line LLC submits Substitute Eighth Revised Sheet 20 to its FERC Gas Tariff, Original Volume 1, to be effective 10/11/07.
Filed Date: 09/10/2007.
Accession Number: 20070911–0087.
Comment Date: 5 p.m. Eastern Time on Monday, September 24, 2007.

Docket Numbers: RP07–688–000.
Applicants: Chandeleur Pipe Line Company.
Description: Chandeleur Pipe Line Co submits Twenty First Revised Sheet 5 to its FERC Gas Tariff, Second Revised Volume 1, to be effective 10/11/07.
Filed Date: 09/10/2007.
Accession Number: 20070911–0086.
Comment Date: 5 p.m. Eastern Time on Monday, September 24, 2007.

Docket Numbers: RP07–689–000.
Applicants: Northwest Pipeline Corporation.
Description: Northwest Pipeline Corp requests that FERC waive an obligation imposed upon Northwest by a 1998 Settlement Agreement to pass through to its customers certain Gas Research Institute refunds.
Filed Date: 09/10/2007.
Accession Number: 20070911–0109.
Comment Date: 5 p.m. Eastern Time on Monday, September 24, 2007.

Docket Numbers: RP07–88–002.
Applicants: El Paso Natural Gas Company.
Description: El Paso Natural Gas Company submits this filing to provide the requested additional information on the accounting practices used to report the disposition of costs & revenues related to operational gas purchases.
Filed Date: 09/10/2007.
Accession Number: 20070911–0088.
Comment Date: 5 p.m. Eastern Time on Monday, September 24, 2007.

Docket Numbers: RP97–391–005.
Applicants: Gas Technology Institute.
Description: Northwest Pipeline Corp requests that FERC waive an obligation imposed upon Northwest by a 1998 Settlement Agreement to pass through to its customers certain Gas Research Institute refunds.
Filed Date: 09/10/2007.
Accession Number: 20070911–0109.
Comment Date: 5 p.m. Eastern Time on Monday, September 24, 2007.

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.,

Acting Deputy Secretary.

[FR Doc. E7–18281 Filed 9–17–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket# EPA–RO4–SFUND–2007–0919; FRL–8469–5]

Davis Refining Superfund Site; Tallahassee, Leon County, FL; Notice of Settlements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of settlements.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into six settlements for reimbursement of past response costs concerning the Davis Refining Superfund Site located in Tallahassee, Leon County, Florida. The settling PRPs are: Middlebrooks Relocation Systems, Inc., Curt Masek and Radical Car Care, Pafford Oil Company, Williams Concrete Construction, Inc., Southside Mower & Magneto Repair, Inc., and Thelma Thompson.

DATES: The Agency will consider public comments on the settlements until October 18, 2007. The Agency will consider all comments received and may modify or withdraw its consent to the settlements if comments received disclose facts or considerations which indicate that the settlements are inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlements are available from Ms. Paula V. Batchelor. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2007–0919 or Site name Davis Refining Superfund Site by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *Batchelor.Paula@epa.gov.*
- Fax: 404–562–8842. Attn: Paula V. Batchelor.
- Mail: Ms. Paula V. Batchelor, U.S. EPA Region 4, SD–SEIMB, 61 Forsyth Street, SW., Atlanta, Georgia 30303. ''In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.''

Instructions: Direct your comments to Docket ID No. EPA–R04–SFUND–2007–0919. 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 U.S. EPA Region 4 office located at 61 Forsyth Street, SW., Atlanta, Georgia 30303. Regional office is open from 7 a.m. until 6:30 p.m. Monday through Friday, excluding legal holidays.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Paula V. Batchelor at 404/562–8887.

Dated: September 4, 2007.

De'Lyntoneus Moore,

Acting Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. E7–18351 Filed 9–17–07; 8:45 am]

BILLING CODE 6560–50–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 October 3, 2007.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Michael D. Quagliano, Edwards, Colorado; to acquire voting shares of Solera National Bancorp, Inc., and thereby indirectly acquire voting shares of Solera National Bank, both of Lakewood, Colorado.

Board of Governors of the Federal Reserve System, September 13, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–18348 Filed 9–17–07; 8:45 am]

BILLING CODE 6210–01–S

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 October 2, 2007.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Stuart B. Drake; Diana L. Drake; Martin B. Drake II; Clayton J. Drake, all of Farmer City, Illinois; Stephanie S. Drake, Champaign, Illinois; Stanley L. Drake, Sunrise Beach, Missouri; Stephen P. Drake, Champaign, Illinois, individually and as custodian under the Illinois Uniform Transfers to Minors Act for each of Clayton J. Drake; Nicole L. Drake; and Noah S. Drake, all of Farmer City, Illinois; and as trustee of the Martin Bogarte Drake II Irrevocable Trust; the Clayton James Drake Irrevocable Trust; the Nicole Lynn Drake Irrevocable Trust; the Noah Stuart Drake Irrevocable Trust; and the Richard K. Drake Irrevocable GST Trust; Patricia R. Drake, Champaign, Illinois; George E. Drake; Elinor J. Drake; Allen C. Drake, all of El Paso, Illinois, individually and as trustee of the George Drake Family Trust; Fred L. Drake; Arthur M. Drake, both of Bloomington, Illinois; Marcia J. Dudley, El Paso, Illinois; the Richard K. Drake Irrevocable GST Trust; the Martin Bogarte Drake II Irrevocable Trust; the Clayton James Drake Irrevocable Trust; the Nicole Lynn Drake Irrevocable Trust; the Noah Stuart Drake Irrevocable Trust, all of Farmer City, Illinois; the George Drake Family Trust, El Paso, Illinois; the Marylou Drake Inter–Vivos Revocable Trust; and Farmer City State Bank, both of Farmer City, Illinois, as trustee of the Marylou Drake Inter–Vivos Revocable Trust; to retain voting shares of Lincoln S.B. Corp., and thereby indirectly retain voting shares of State Bank of Lincoln, both of Lincoln, Illinois.

Board of Governors of the Federal Reserve System, September 12, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–18283 Filed 9–17–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 12, 2007.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. National Penn Bancshares, Inc., Boyertown, Pennsylvania; to acquire Christiana Bank & Trust Company, through a merger with NBP Interim Bank, both of Greenville, Delaware.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Founders Corporation of Loudoun, Inc.; to become a bank holding company by acquiring 100 percent of the voting shares of Founders Bank & Trust, N.A., both of Leesburg, Virginia (in organization).

Board of Governors of the Federal Reserve System, September 12, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–18282 Filed 9–17–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 15, 2007.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Magnolia Banking Corporation, Magnolia, Arkansas; to acquire 100 percent of the voting shares of Southern State Bancshares, Inc., Malvern, Arkansas, and thereby indirectly acquire Southern State Bank, Malvern, Arkansas.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Montana Business Capital Corporation (to be known as Bancorp of Montana Holding Company), Missoula, Montana; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Montana, Missoula, Montana.

In connection with this application, applicant also has applied to engage in commercial and residential loan origination activities pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, September 13, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–18347 Filed 9–17–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2007–29143]

Chemical Transportation Advisory Committee; Charter Renewal

AGENCY: Coast Guard, DHS.

ACTION: Notice of charter renewal.

SUMMARY: Under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463), the Secretary of Homeland Security has renewed the charter for the Chemical Transportation Advisory Committee (CTAC) for 2 years from August 17, 2007, until August 17, 2009. CTAC is a Federal advisory committee under 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat. 770). This Committee advises the Coast Guard on safe and secure transportation and handling of hazardous materials in bulk on U.S.-flag vessels and barges in U.S. ports and waterways.

ADDRESSES: A copy of this notice and the Committee charter is available in our online docket, USCG–2007–29143, at *http://dms.dot.gov.* You may request a copy of the charter by writing to Commandant (CG–3PSO), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001; by calling 202–372–1420; or by faxing 202–372–1926.

FOR FURTHER INFORMATION CONTACT: Commander Richard Raksnis, Executive Director of CTAC, or Ms. Sara S. Ju, Assistant to the Executive Director, telephone at 202–372–1425, fax 202–372–1926.

Dated: September 5, 2007.

J. G. Lantz,

Director of National and International Standards, Assistant Commandant for Prevention.

[FR Doc. E7–18304 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2007–29142]

National Offshore Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the National Offshore Safety Advisory Committee (NOSAC). NOSAC provides advice and makes recommendations to the Coast Guard on matters affecting the offshore industry.

DATES: Application forms should reach the Coast Guard on or before November 30, 2007.

ADDRESSES: You may request an application form by writing to Commandant (CG–3PSO–2), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001; by calling 202–372–1414; or by faxing 202–372–1926. A copy of the application form is also available from the Coast Guard's Advisory Committee Web page at: *http://www.uscg.mil/hq/g-m/advisory/index.htm.* Send your application in written form to the above street address. A copy of the application, along with this notice, is also available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Commander John M. Cushing, Executive Director of NOSAC, or James M. Magill, Assistant to the Executive Director, telephone 202–372–1414, fax 202–372–1926.

SUPPLEMENTARY INFORMATION: NOSAC is a Federal advisory committee established under the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (Pub. L. 92–463). It consists of 15 regular members who have particular knowledge and experience regarding offshore technology, equipment, safety and training, as well as environmental expertise in the exploration or recovery of offshore mineral resources. It provides advice and makes recommendations to the Assistant Commandant for Prevention regarding safety, security and rulemaking matters relating to the offshore mineral and energy industries. This advice assists the Coast Guard in developing policy and regulations and formulating the positions of the United States in advance of meetings of the International Maritime Organization.

NOSAC meets approximately twice a year, with one of these meetings being held at Coast Guard Headquarters in Washington, DC. It may also meet for extraordinary purposes. Its subcommittees and working groups may meet to consider specific problems as required.

We will consider applications for five positions. These positions will begin in January 2008. Applications should reach us by November 30, 2007, but we will consider applications received later if they arrive within a reasonable time before we make our recommendations to the Secretary of Homeland Security.

To be eligible, applicants should have experience in one of the following categories: (1) Offshore drilling, (2) offshore supply vessel services including geophysical services, (3) safety and training relating to offshore activities, (4) offshore production or (5) national environmental interests. Please state on the application form which of the five categories you are applying for. Each member normally serves a term of 3 years or until a replacement is appointed. A few members may serve consecutive terms. All members serve at their own expense and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the policy of the Coast Guard on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Dated: September 11, 2007.

J.G. Lantz,

Director of National and International Standards, Assistant Commandant for Prevention.

[FR Doc. E7–18300 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–80]

Notice of Submission of Proposed Information Collection to OMB; Public and Indian Housing ENERGY STAR and Energy Audit Survey

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

In response to Congress and the mandate under the Energy Conservation Policy Act (42 U.S.C. 8251 et seq.) a survey is needed to accurately conduct research and report steps taken to reduce utility expenses through energy conservation measures of public housing. Thereafter, reports will be updated and sent to Congress every 2 years indicating energy strategies for energy reduction goals and how the Department of Housing and Urban Development will monitor the energy usage of public housing agencies.

DATES: *Comments Due Date:* October 18, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Approval Number (2577–NEW) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Public and Indian Housing ENERGY STAR and Energy Audit Survey.

OMB Approval Number: 2577–NEW.

Form Numbers: HUD–52465.

Description of the Need for the Information and its Proposed Use: In response to Congress and the mandate under the Energy Conservation Policy Act (42 U.S.C. 8251 et seq.) a survey is needed to accurately conduct research and report steps taken to reduce utility expenses through energy conservation measures of public housing. Thereafter, reports will be updated and sent to Congress every 2 years indicating energy strategies for energy reduction goals and how the Department of Housing and Urban Development will monitor the energy usage of public housing agencies.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	3,200	1		0.166		533

Total Estimated Burden Hours: 533.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 11, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–18308 Filed 9–17–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–81]

Notice of Submission of Proposed Information Collection to OMB; Exigent Health and Safety Deficiency Correction Certification

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Public Housing Agencies (PHAs) correct/mitigate exigent health and safety (EHS) deficiencies cited in property inspections conducted pursuant to HUD's Uniform Physical Condition Standards inspection protocol. Through the web-based template, PHAs electronically certify that they have corrected/mitigated the EHS deficiencies.

DATES: *Comments Due Date:* October 18, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0241) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Exigent Health and Safety Deficiency Correction Certification.

OMB Approval Number: 2577–0241.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: Public Housing Agencies (PHAs) correct/mitigate exigent health and safety (EHS) deficiencies cited in property inspections conducted pursuant to HUD's Uniform Physical Condition Standards inspection protocol. Through the web-based template, PHAs electronically certify that they have corrected/mitigated the EHS deficiencies.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per responses	=	Burden hours
Reporting Burden	1,166	1		0.42		491

Total Estimated Burden Hours: 491.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 11, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–18309 Filed 9–17–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–79]

Notice of Submission of Proposed Information Collection to OMB; Low Income Housing Tax Credit Database

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

There continues to be great interest in the Low Income Housing Tax Credit Program at HUD, the Department of Treasury, and from many other sources. Unfortunately, since the program is independently administered by more than 50 different state housing agencies, there would be no centralized sources of data about the units that have been developed with this federal subsidy without this data collection effort.

DATES: *Comments Due Date:* October 18, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–0165) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Low Income Housing Tax Credit Database.

OMB Approval Number: 2528–0165.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: There continues to be great interest in the Low Income Housing Tax Credit Program at HUD, the Department of Treasury, and from many other sources. Unfortunately, since the program is independently administered by more than 50 different state housing agencies, there would be no centralized sources of data about the units that have been developed with this federal subsidy without this data collection effort.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	59	1		24		1,416

Total Estimated Burden Hours: 24.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 11, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–18310 Filed 9–17–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5118–N–05]

Notice of Proposed Information Collection: Comment Request; Brownfields Economic Development Initiative (BEDI) Grant Application

AGENCY: Office of Community Planning and Development, 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 19, 2007.

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 L. Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4176, Washington, DC 20410; telephone: 202–708–2374, (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian_L._Deitzer@HUD.gov* for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: David Kaminsky, Brownfields Program Coordinator, Grants Management Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone 202–708–4091 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Brownfields Economic Development Initiative (BEDI) Grant Application.

OMB Control Number, if applicable: 2506–0153.

Description of the need for the information and proposed use: This information collection is required to rate and rank applications submitted as part of a funding competition and to ensure funding eligibility of applicant activities. Respondents are units of general local government eligible for Section 108 Loan Guarantees under 42 U.S.C. 5308.

Agency form numbers, if applicable: HUD–40123, HUD–40122.

Members of Affected Public: Local Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	50	1		40		2,000

Total Estimated Burden Hours: 2,000.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 11, 2007.

Nelson R. Bregón,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. E7–18311 Filed 9–17–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5147–N–01]

Capacity Building for Community Development and Affordable Housing Grants

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA).

Overview Information

A. *Federal Agency Name:* Department of Housing and Urban Development, Office of Community Planning and Development.

B. *Funding Opportunity Title:* Capacity Building for Community Development and Affordable Housing Grants.

C. *Announcement Type:* Initial Announcement.

D. *Funding Opportunity Number:* FR–5147–N–01.

E. *Catalog of Federal Domestic Assistance (CFDA) Number:* 14.252.

F. *Dates:* The application deadline date is December 12, 2007.

G. *Additional Overview Information:* The competition is limited to the four organizations identified in section 4 of the HUD Demonstration Act of 1993. These organizations are: Enterprise Community Partners, Inc. (formerly The Enterprise Foundation), Local Initiatives Support Corporation, Habitat for Humanity, and YouthBuild USA. Applicants interested in developing the capacity of community housing development organizations (CHDOs) to undertake community development and affordable housing projects should carefully review the General Section of HUD's 2007 SuperNOFA (72 FR 2396), published January 18, 2007; the Introduction to the FY2007 SuperNOFA (72 FR 11434), published on March 13, 2007; the FY2007 SuperNOFA Supplementary Information and Technical Corrections (72 FR 27032), published on May 11, 2007; and the information listed in this NOFA. The application submission information is contained in this NOFA at Section IV.B. Approximately $29,590,000 is available. A 3:1 match of private resources to federal funds is required.

Full Text of Announcement

I. Funding Opportunity Description

A. *Program Description.* The purpose of the capacity building program is to enhance the technical and administrative capabilities of community development corporations (CDCs) and CHDOs to carry out community development and affordable housing activities.

B. *Authority.* The capacity building program is authorized by section 4 of the HUD Demonstration Act of 1993 (Pub. L. 103–120, 107 Stat. 1148, 42 U.S.C. 9816 note), as amended, and the Revised Continuing Appropriations Resolution, 2007 (Pub. L. 110–5).

II. Award Information

A. *Available Funds.* Approximately $29,590,000 in FY2007 funding is available to carry out the eligible activities related to affordable housing and community development for the capacity building program.

B. *Performance Period.* Awards will be for a period of 48 months.

C. *Terms of Award.* HUD will enter into a grant agreement with selected applicants for the performance period.

III. Eligibility Information

A. Eligible Applicants

1. The competition is limited to the four organizations identified in section 4 of the HUD Demonstration Act of 1993. These organizations are: Enterprise Community Partners, Inc. (formerly The Enterprise Foundation), the Local Initiatives Support Corporation, Habitat for Humanity, and YouthBuild USA.

2. To be eligible for funding under this NOFA, all applicants must also meet the threshold requirements of the General Section, including the Civil Rights threshold in section III.C.

3. Applicants may propose assistance using in-house staff, subcontractors, subrecipients, and local organizations that have the requisite experience and capabilities.

B. Match Requirement

Section 4 of the HUD Demonstration Act of 1993 requires that each dollar awarded must be matched by three dollars in cash or in-kind contributions obtained from private sources. This is a threshold requirement. To receive funding under this NOFA, each of the eligible organizations must document their share of matching resources, including resources committed directly or by a third party to a grantee or subgrantee to conduct activities. In-kind contributions shall conform to the requirements of 24 CFR 84.23. An applicant who fails to provide documentation of the matching requirement shall be considered ineligible. Evidence of commitment for the three-to-one match, such as signed letters from private funding sources, shall be scanned and attached to the electronic application or submitted via fax (using form HUD–96011, ''Third Party Documentation Facsimile Transmittal'' (''Facsimile Transmittal Form'' on Grants.gov) as part of the application.

C. Other

1. *Eligible Activities and Priorities.* Funds may be used to provide the following services.

a. Training, education, support, and advice to enhance the technical and administrative capabilities of CDCs and CHDOs, including the capacity to participate in consolidated planning, as well as in fair housing planning and continuum-of-care homeless assistance efforts, that help ensure community-wide participation in assessing area needs; consulting broadly within the community; cooperatively planning for the use of available resources in a comprehensive and holistic manner; and assisting in evaluating performance under these community efforts and in linking plans with neighboring communities in order to foster regional planning;

b. Loans, grants, development assistance, predevelopment assistance, or other financial assistance to CDCs and CHDOs to carry out community development and affordable housing activities that benefit low-income families and persons, including the acquisition, construction, or rehabilitation of housing for low-income families and persons, and community and economic development activities that create jobs for low-income persons; and

c. Such other activities as may be determined by the grantees in consultation with the Secretary or his or her designee. Activities undertaken as part of, or as a result of, capacity building efforts described in this section shall support the implementation of other HUD programs, especially Community Development Block Grant (CDBG), HOME, Homeless programs, and Housing Opportunities for Persons with AIDS (HOPWA). Further, such activities shall support HUD's Strategic Plan and priorities as described in the General Section.

2. *DUNS Requirement.* Refer to the General Section for information regarding the Data Universal Numbering System (DUNS) requirement. Applicants must obtain a DUNS number to receive an award from HUD.

3. *Other Eligibility Requirements.* All applicants requesting funding under this NOFA must be in compliance with the applicable threshold requirements found in the General Section. Applicants that do not meet these requirements will be ineligible for funding.

4. *False Statements.* An applicant's false statement in an application is grounds for denial or termination of an award and grounds for possible punishment, as provided in 18 U.S.C. 1001.

5. *Environmental Review.* Individual project sites to be funded by awards under this NOFA may not be known at the time the individual grant agreements are awarded and also may not be known when some of the individual subgrants are made. Therefore, in accordance with 24 CFR 50.3(h), the application and the grant agreement must provide that no commitment or expenditure of HUD or private match funds to a HUD-assisted project may be made until HUD has: (1) Completed an environmental review to the extent required under applicable regulations and (2) given notification of its approval, in accordance with 24 CFR 50.3(h).

IV. Application and Submission Information

A. Addresses to Request Application Package

Applications must be received and validated by Grants.gov no later than 11:59:59 p.m. eastern time on the application deadline date. HUD must receive paper copy applications from applicants that received a waiver no later than 11:59:59 p.m. on the application deadline date. See the General Section for application submission and timely receipt procedures and for instructions on how to request a waiver. Paper applications will not be accepted, unless the applicant has received a waiver of the electronic submission requirement.

B. Content and Form of Application Submission

A completed application consists of an application submitted by an authorized official of the organization and containing all relevant sections of the application, as shown in the checklist below in Section IV.B.3.

1. *Page Limitation.* Narratives addressing Factors 1 through 5 are limited to no more than 25 typed pages. That is, reviewers will not review more than 25 pages for all five factors combined, except that the page limit does not include the form HUD–96010, Program Logic Model.

2. *Prohibition on Materials Not Required.* Materials other than what is requested in this NOFA are prohibited. Reviewers will not consider resumes, charts, letters, or any other documents attached to the application that are not specified in this NOFA.

3. *Checklist for Application Submission.* Applicants submitting electronic copies should follow the procedures in Sections IV.B. and F. of the General Section. The following checklist is provided as a guide to help ensure that applicants submit all the required elements. For applicants receiving a waiver of the electronic submission requirement, the paper submission must be in the order provided below. All applicants should enter the applicant name, DUNS number, and page numbers on the narrative pages of the application.

__SF–424, Application for Federal Assistance (**Note:** Applicants must enter their legal name in box 8.a. of the SF–424 as it appears in the Central Contractor Register (CCR). See the General Section regarding CCR Registration);

__SF–424 Supplement, Survey for Ensuring Equal Opportunity for Applicants (''Faith Based EEO Survey (SF–424 SUPP)'' on Grants.gov);

__Narrative addressing Factors 1 through 5;

__HUD–96010, Program Logic Model;

__HUD–424–CB, Grant Application Detailed Budget Form (''HUD Detailed Budget Form'' on Grants.gov);

__HUD–424–CBW, Detailed Budget Worksheet for Non-Construction Projects;

__SF–LLL, Disclosure of Lobbying Activities (if applicable);

__HUD–2880, Applicant/Recipient Disclosure/Update Report (''HUD

Applicant Recipient Disclosure Report'' on Grants.gov);

__HUD–2993, Acknowledgment of Application Receipt (applicable to paper applications only);

__HUD–2994–A, You Are Our Client! Grant Applicant Survey (Optional); and

__HUD–96011, Third Party Documentation Facsimile Transmittal (''Facsimile Transmittal Form'' on Grants.gov).

C. Submission Dates and Times

The application deadline date is December 12, 2007. Unless you received a waiver to the electronic application submission requirement, your completed application must be submitted through *http://www.grants.gov/applicants/apply for grants.jsp* and must be received and validated by Grants.gov no later than 11:59:59 p.m. eastern time on the application deadline date. (Refer to Section VI of the General Section for further information on the delivery and receipt of applications.)

D. Intergovernmental Review

Intergovernmental review is not applicable to capacity building applications.

E. Funding Restrictions

No fee or profit may be paid to any recipient or subrecipient of an award under this capacity building NOFA.

F. Other Submission Requirements

1. *Electronic Delivery:*

a. The Grants.gov Web site offers a simple, unified application process. There are several registration steps applicants need to complete. Further information is contained in the General Section published on January 18, 2007 (72 FR 2396). Applicants should also review the March 13, 2007, publication (72 FR 11434) of HUD's Discretionary Programs (FY2007 SuperNOFA), as well as the technical correction to the FY2007 SuperNOFA General Section published on May 11, 2007 (72 FR 27032). Capacity Building applicants should also read HUD's **Federal Register** Notice on Early Registration published in the **Federal Register** on October 31, 2006 (71 FR 64070).

b. *Electronic Signature.* Applications submitted through Grants.gov constitute submission as an electronically signed application.

2. Instructions on how to submit electronically are outlined in HUD's ''Desktop User's Guide'' located on HUD's Grants Web site at *http://www.hud.gov/grants/index.cfm.*

3. *Waiver of Electronic Submission Requirement.* Applicants interested in applying for funding under this NOFA must submit their applications electronically or request a waiver from the electronic submission process. Waiver requests must be submitted in writing by e-mail. Waiver requests must be submitted no later than 15 days prior to the application deadline date and should be sent to Karen E. Daly at *Karen.E.Daly@hud.gov.* If you are granted a waiver from the electronic submission process, your application must be received by HUD no later than 11:59:59 p.m. eastern time on the application deadline date. See the General Section for additional information.

4. *Proof of Timely Submission.* Applicants must submit their applications via grants.gov *http://www.grants.gov/applicants/apply_for_grants.jsp* in time for receipt and validation by 11:59:59 p.m. eastern time on the application deadline date of December 12, 2007. Validation can take up to 72 hours, so applicants should submit with ample time for the process to be completed. Applicants are also advised to submit with sufficient time to correct any deficiencies that would prevent the acceptance of your application by Grants.gov. (Refer to the General Section for specific procedures regarding proof of timely submission of applications.)

V. Application Review Information

A. Criteria

The maximum number of points to be awarded for a capacity building application is 100. The minimum score for an application to be considered for funding is 75. The capacity building program is not subject to bonus points, as described in the General Section.

Points are assigned on five factors. When addressing Factors 2 through 5, applicants should discuss the specific capacity building activities that will be carried out during the term of the grant agreement. Applicants should provide relevant examples to support the proposal, where appropriate. Applicants should also be specific when describing the communities, populations, and organizations that they propose to serve and the specific outcomes expected as a result of the capacity building. Applicants should also be specific about the relationship of their plan to the goals and objectives in the HUD Strategic Plan. The plan can be viewed on the HUD Web site at *http://www.hud.gov/utilities/intercept.cfm?/offices/cfo/reports/hud_strat_plan_2006–2011.pdf.*

1. *Rating Factor 1:* Capacity of the Applicant and Relevant Organizational Experience (15 points)

Factor 1 relates to the capacity of the applicant and its relevant organizational experience. Rating of the ''applicant'' or the ''applicant's organization and staff'' includes in-house staff and any subcontractors and subrecipients who are firmly committed to the project. In responding to Factor 1, applicants should specify the experience, knowledge, skills, and abilities of the applicant's organization and staff, and of any persons and organizations firmly committed to the project. Please do not include the Social Security Numbers of any staff.

a. (5 points) Recent and successful experience of the applicant's organization in building the capacity of CDCs and CHDOs to develop affordable housing and community development projects.

In rating this factor, HUD will consider the extent to which the application demonstrates successful experience, within the last 4 years, in providing technical and administrative expertise to build the capacity of CDCs and CHDOs.

b. (5 points) Depth of experience in managing multiple capacity building tasks, to multiple entities, and in more than one geographic area.

In rating this factor, HUD will consider the extent to which the application demonstrates ability to manage capacity building assignments effectively.

c. (5 points) Knowledgeable key personnel skilled in providing one or more of the eligible activities for the capacity building program; a sufficient number of staff or ability to procure qualified experts or professionals with the knowledge, skills, and abilities to deliver the proposed level of services in the proposed service area in a timely and effective fashion; and an ability to provide capacity building in urban and rural settings.

In rating this factor, HUD will consider the extent to which the application demonstrates that the organization has an adequate number of key staff or the ability to procure individuals with the knowledge of effective capacity building approaches and knowledge of developing affordable housing and community development projects.

2. *Rating Factor 2:* Need/Extent of the Problem (15 points)

Sound and extensive understanding of need for capacity building in relation to the priorities listed in Section III.C. of this NOFA, as demonstrated by objective information and/or data, such as information from current census data, the American Housing Survey, or other relevant data sources. Sound and extensive understanding of high-priority needs in urban and rural settings for CHDOs and CDCs, as demonstrated by objective information and/or data.

In rating this factor, HUD will evaluate the extent to which the application demonstrates an understanding of the specific needs for capacity building and supports the description of need with reliable, program-specific, quantitative information.

3. *Rating Factor 3:* Soundness of Approach (40 points)

a. (20 points) A sound approach for addressing the need for eligible capacity building activities in relation to the priorities listed in Section III.C. of this NOFA that will result in positive outcomes.

In rating this factor, HUD will evaluate the extent to which the application presents and supports a detailed, feasible, and practical approach for addressing capacity building needs, including techniques, time frames, goals, and intended beneficiaries, and the likelihood that these activities will be cost-effective and will result in the ability of the organization receiving technical assistance to commence work on specific housing and community development projects by the end of the performance period.

b. (10 points) A feasible work plan for designing, organizing, managing, and carrying out the proposed capacity building activities.

In rating this factor, HUD will evaluate the extent to which the application demonstrates the efficiency of the design, organization, and management of the proposed activities.

c. (10 points) An effective assistance program to specific disadvantaged communities, populations, and/or organizations that previously have been underserved and have the potential to participate in the capacity building program (such as the Neighborhood Revitalization Strategy Areas) designated by HUD, Colonias, or locally designated community development target areas.

In rating this factor, HUD will evaluate the extent to which the applicant: (1) Has identified and has documented, using reliable data, specific communities, populations, or organizations that have been disadvantaged or previously underserved communities, populations, or organizations and (2) has developed an effective strategy for engaging the participation of those communities, populations, or organizations in the capacity building program.

4. *Rating Factor 4:* Leveraging Resources (15 points)

This factor evaluates the applicant's ability to leverage (secure) public and/or private sector resources (such as financing, supplies, or services) from sources other than HUD that can be added to HUD's funds to perform eligible activities and sustain the applicant's proposed project. Higher points will be awarded for higher percentages of leveraged resources, compared to the amount of HUD funds requested. No leveraged points will be awarded if the minimum match is not exceeded. For leveraging, HUD's Management Plan has a performance goal of ten investment dollars from outside sources in total project development costs for each federal dollar awarded. To receive points for leverage, all contributions (cash or in-kind) promised during the period of performance must be expressed in dollar values and documented in a commitment letter submitted with the application from a responsible official of each contributing organization. All leveraging commitments shall be scanned and attached to the electronic application or submitted via fax (using form HUD–96011, ''Third Party Documentation Facsimile Transmittal'' (''Facsimile Transmittal Form'' on Grants.gov) as part of the application.

Applicants must note that leveraging resources are considered additional resources beyond and above the statutorily required 3:1 matching resource requirement and cannot be counted towards the statutory match requirement.

5. *Rating Factor 5:* Achieving Results and Program Evaluation (15 points)

a. (8 points) An effective, quantifiable evaluation plan for measuring performance using the Logic Model (form HUD–96010, ''Program Outcome Logic Model'') with specific outcome measures and benchmarks, and performance improvements.

In rating this factor, HUD will evaluate the extent to which the application has an evaluation plan that includes outcomes and is specific, measurable, and appropriate in relation to the activities proposed. HUD is committed to ensuring that programs result in the achievement of HUD's strategic mission. To support this effort, grant applications submitted for HUD programs will be rated on how well they tie proposed outcomes to HUD's policy priorities and annual goals and objectives, as well as the quality of the applicant's proposed evaluation and monitoring plans. HUD's strategic framework establishes the goals and objectives for the Department. Please refer to the General Section.

The Logic Model should, at a minimum, discuss those performance indicators that have been developed for use by HUD and the Office of Management and Budget (OMB) in evaluating the section 4 program using OMB's Program Assessment Rating Tool (PART). These measures include: (1) The annual number of homes renovated, preserved, or newly constructed; (2) the annual number of trainings created and provided to CDCs; (3) the long-term total development cost estimate of community development projects funded by CDCs; and (4) the efficiency measure of per-unit cost of capacity building for housing units developed or renovated.

Applicants should also outline any other short-or long-term outcomes that are indicators of their program's performance.

b. (7 points) Successful past performance in administering HUD's capacity building program. This rating factor reflects HUD's goal to embrace high standards of ethics, management, and accountability. Applicants should include, as applicable, increases in Community Planning and Development (CPD) or affordable housing and community development program accomplishments as a result of capacity building (e.g., number of affordable housing units developed, number of trainings delivered to CDCs and CHDOs, growth of CDC and CHDO capacity over time, efficiency or effectiveness of administration of CPD or community development programs, timeliness of use of CPD or community development program funds, and project development investment and leveraging efficiencies).

In rating this factor, HUD will evaluate the extent to which the application demonstrates successful past performance that was timely and resulted in positive outcomes in the delivery of capacity building for affordable housing and community development. HUD will also consider past performance of current section 4 grantees, including financial and other information in HUD's files.

B. Review and Selection Process

1. *Review Types.* Two types of reviews will be conducted. First, HUD will review each application to determine whether it meets threshold eligibility requirements. Second, HUD will review and assign scores to applications using the Factors for Award noted in Section V.A.

2. *Ranked Order.* Once rating scores are assigned, rated applications will be listed in ranked order. Applications within the fundable range (score of 75+ points) may then be funded in ranked order.

3. *Threshold Eligibility Requirements.* All applicants must be in compliance with the applicable threshold requirements found in the General Section and the eligibility requirements listed in Section III of this NOFA in order to be reviewed, scored, and ranked. Applications that do not meet these requirements and applications that were received after the deadline (see Section IV.C. of the General Section) will be considered ineligible for funding.

VI. Award Administration Information

A. Award Notices

HUD will send written notifications to both successful and unsuccessful applicants. A notification sent to a successful applicant is not an authorization to begin performance or to incur costs.

After selection for funding, each grantee will submit to HUD a specific work and funding plan for each community it proposes to serve, showing when and how the federal funds and matching funds will be used. The work plan must be sufficiently detailed for monitoring purposes and must identify the performance goals and objectives to be achieved. Within 45 days after submission of a specific work plan, HUD will approve the work plan or notify the grantee of matters that need to be addressed prior to approval. Work plans may be developed for less than the full dollar amount and term of the award, but no HUD-funded costs may be incurred for any activity until the work plan is approved by HUD. All activities are also subject to the environmental requirements in section III.C.5. of this notice.

After selection, but prior to award, applicants selected for funding will be required to provide HUD with their written Code of Conduct, if they have not previously done so and it is recorded on the HUD Web site at *http://www.hud.gov/offices/adm/grants/codeofconduct/cconduct.cfm.*

B. Administrative and National Policy Requirements.

1. *OMB Circulars and Government-wide Regulations Applicable to Financial Assistance Programs.* Awards under this NOFA will be governed by 24 CFR part 84 (Uniform Administrative Requirements), OMB Circular A–122 (Cost Principles for Nonprofit Organizations), and OMB Circular A–133 (Audits of States, Local Governments, and Non-Profit Organizations). Copies of the OMB Circulars may be obtained from Executive Office of the President's (EOP) Publications Office, Room 2200, New Executive Office Building, Washington, DC 20503, telephone number (202) 395–3080 (this is not a toll-free number) or (800) 877–8339 (TTY Federal Information Relay Service). Information also may be obtained from the OMB Web site at *http://www.whitehouse.gov/omb/circulars/index.html.*

2. *General.* See section III.C. of the General Section regarding additional applicable requirements.

C. Reporting

1. Grantees will be required to report to the government technical representative (GTR) quarterly, unless otherwise specified in the grant agreement. The quarterly performance report shall be submitted to HUD within 45 days after each calendar quarter. Performance reports shall include reports on both performance and financial progress under work plans and shall include reports on the commitment and expenditure of private matching resources utilized through the end of the reporting period. Reports shall conform to the reporting requirements of 24 CFR part 84. As part of the required quarterly report to HUD, grant recipients must include a completed Program Logic Model (form HUD–96010), which identifies output and outcome achievements.

2. Additional information or increased frequency of reporting may be required by HUD any time during the grant agreement, if HUD finds such reporting to be necessary for monitoring purposes.

3. To further the consultation process and share the results of progress to date, the Secretary may require grantees to present and discuss their performance reports at annual meetings in Washington, DC, during the life of the award.

4. The performance reports must contain the information required under 24 CFR part 84, including a comparison of actual accomplishments with the objectives and performance goals of the work plans. In the work plans, each grantee will identify performance goals and objectives established for each community in which it proposes to work and appropriate measurements under the work plan, such as the number of housing units and facilities each CDC or CHDO produces annually during the grant period and the average cost of such units. The performance reports will also include a discussion of the reasonableness of the unit costs, the reasons for slippage if established objectives and goals are not met, and additional pertinent information.

5. A final performance report, in the form described in paragraph (d) immediately above, shall be provided to HUD by each grantee within 90 days after the completion date of the award.

6. Financial status reports (SF–269A) shall be submitted quarterly.

VII. Agency Contacts

For Assistance. Applicants may contact Karen E. Daly at (202) 708–1817 (this is not a toll-free number). Persons with hearing and speech impairments may access the above numbers via TTY (text telephone) by calling the Federal Information Relay Service at (800) 877–8339 (this is a toll-free number). Information may also be obtained through the HUD Web site at *http://www.hud.gov.*

VIII. Other Information

A. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act do not apply because there are fewer than ten respondents; only four applicants are eligible for this program.

B. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made, in accordance with the Department's regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410.

C. Fair Housing and Equal Opportunity

Applications must contain a certification that the applicant and all subgrantees shall comply with the requirements of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX of the Education Amendments Act of 1972, and the Americans with Disabilities Act, and will affirmatively further fair housing.

D. Section 3 of the Housing and Urban Development Act of 1968

Applications must contain a certification that the applicant and all subgrantees will comply with section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) and HUD's implementing regulations at 24 CFR part 135, which require that, to the greatest extent feasible, opportunities for training and employment be given to low-income persons residing within the unit of local government for the metropolitan area (or nonmetropolitan county) in which the project is located.

Dated: September 11, 2007.

Nelson R. Bregón,

General Deputy Assistant, Secretary for Community Planning and Development.

[FR Doc. E7–18386 Filed 9–17–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Howland Island National Wildlife Refuge, Baker Island National Wildlife Refuge, and Jarvis Island National Wildlife Refuge, U.S. Territories

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of draft comprehensive conservation plans and associated environmental assessments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the Draft Comprehensive Conservation Plans and Environmental Assessments (Draft CCPs/EAs) for public review and comments, for Howland Island National Wildlife Refuge, Baker Island National Wildlife Refuge, and Jarvis Island National Wildlife Refuge. These three national wildlife refuges are unincorporated U.S. territories located in the central Pacific Ocean, hereinafter collectively called Refuges. These Draft CCPs/EAs describe the Service's proposal for management of the Refuges over the next 15 years.

DATES: Written comments must be received at the address below by October 30, 2007.

ADDRESSES: Comments on the Draft CCPs/EAs should be addressed to: Donald Palawski, Refuge Manager, Pacific Remote Islands National Wildlife Refuge Complex, 300 Ala Moana Blvd., Room 5–231, Honolulu, HI 96717. Comments may also be submitted via electronic mail to *FW1PlanningComments@fws.gov*. Please use Pacific Island NWR CCPs, in the subject line.

FOR FURTHER INFORMATION CONTACT: Donald Palawski, Refuge Manager, phone number (808) 792–9560.

SUPPLEMENTARY INFORMATION: The CCPs/EAs were prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 (NEPA). Proposed changes to refuge management include more frequent biological surveys, attraction of two rare seabird species to the refuges, and increased scientific research opportunities. No public uses of the Refuges are proposed.

Copies of the Draft CCPs/EAs may be obtained by writing to the U.S. Fish and Wildlife Service, Attn: Charles Pelizza, Refuge Conservation Planner, Hawaiian and Pacific Islands Refuges, c/o Oahu NWR Complex, 66–590 Kamehameha Highway, Haleiwa, HI 96712. The Draft CCPs/EAs will also be available for viewing and downloading online at *http://pacific.fws.gov/planning.* Copies of the Draft CCPs/EAs may be viewed at the Pacific Remote Islands National Wildlife Refuge Complex Office during the regular business working hours from 7 a.m. to 4 p.m., Monday through Friday. The office is located in the Prince Jonah Kuhio Kalanianaole Federal Building at 300 Ala Moana Blvd., Room 5–231, Honolulu, HI.

Background

The Refuges are located near the Equator between 1,300 and 1,700 nautical miles south to southwest from their administrative office in Honolulu, HI. These Refuges are part of the National Wildlife Refuge System (System) which is managed by the Service. We are developing individual Draft CCPs/EAs for each of the Refuges, however, we are developing them under one planning process, because they are part of the same ecosystem and share many of the same issues and management opportunities.

These Refuges were established in 1974, when the Secretary of the Interior transferred responsibility for the islands, and their territorial seas outward to the 3-nautical-mile limit, from the Office of Territorial Affairs to the Service. The islands range in size from 648 to 1,273 acres with total acreage for the Refuges ranging from 31,909 to 37,487 acres. The purpose for establishing the Refuges is ''the restoration and preservation of the complete ecosystem, terrestrial and marine.'' Special emphasis is placed on the protection, restoration, and preservation of nesting seabirds. Because of the physical characteristics of these islands, landings and access are extremely hazardous; therefore, the Refuges have been closed to public entry since establishment, to protect wildlife values and human safety.

Purpose and Need for Action

The purpose of the CCPs is to provide a coherent, integrated set of management actions to help attain the purposes and objectives of the Refuges. The CCPs identify the conservation role of the Refuges, explain the Service's proposed management actions, and provide a basis for Refuge budget requests.

Alternatives

Four alternatives for managing the Refuges for the next 15 years are identified and evaluated in the Draft CCPs/EAs. The preferred alternative in each CCP/EA is to implement Alternative B. Alternative B achieves the Refuges' purposes, and goals; contributes to the System mission; addresses significant issues and relevant mandates; and is consistent with principles of sound fish and wildlife management. The Refuges are currently closed to all public use activities and will remain closed under each alternative.

Alternative A (No Action Alternative). Alternative A provides a baseline from which to compare the action alternatives (Alternatives B, C, and D). Under Alternative A, management practices already underway or funded would continue. These activities include routine biological surveys, inspection of entrance signs, monitoring for the presence of invasive species, and collection of marine debris. Visits would occur once every 2 years and would be arranged through, and dependent upon, partner agencies and organizations, as is current practice.

Alternative B. Alternative B is the Service's preferred alternative. Under Alternative B, the frequency of the activities described in Alternative A would increase and occur annually. There would be no increase in the scope or complexity of management activities. The collection of scientific data and assessment of habitat conditions would continue to occur. Additional management activities that would occur under Alternative B include a project to attract two rare seabird species to the Refuges and a project to conduct additional marine habitat exploration.

Alternative C. This alternative includes a substantial increase in the frequency of visits, and also increases the scale and scope of management activities conducted during site visits. A Service owned or chartered research vessel, and crew members and their operational needs are required components of this alternative.

Monitoring wildlife populations and habitats, restoring habitats, and other management activities could occur year-round. Year-round or seasonal field camps would be rotated among the Refuges so that a more complete understanding of annual cycles and fluctuations in wildlife populations would be possible.

Alternative D. Under Alternative D, a year-round field camp and would be rotated among the Refuges. A Service owned and operated vessel would be an integral and required component of this alternative. Surveys and monitoring activities under this alternative would provide the greatest understanding and most effective management of refuge resources. Scientific research would be encouraged and enhanced, with an opportunity for the Refuges to serve as baseline sites for global climate change research.

Public Comments

Public comments are requested, considered, and incorporated throughout the planning process. A previous notice was published in the **Federal Register** on September 14, 2005 (70 FR 54401) announcing the development of these Draft CCPs/EAs. After the review and comment period ends for these documents, comments will be analyzed by the Service and addressed in revised planning and NEPA documents. All comments received from individuals, including names and addresses, become part of the official public record and may be released. Requests for such comments will be handled in accordance with the Freedom of Information Act, the Council on Environmental Quality's NEPA regulations [40 CFR 1506.6(f)], and Service and Departmental policies and procedures.

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 in accordance with law. While you can ask us in your comment to withhold your personal identifying information from public review, Federal public disclosure requirements may apply.

Dated: July 16, 2007.

David J. Wesley,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. E7–18331 Filed 9–17–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

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 18, 2007.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE., 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503–231–2063; fax: 503–231–6243). 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: Linda Belluomini, Fish and Wildlife Biologist, at the above Portland address (telephone: 503–231–2063; fax: 503–231–6243).

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.

Permit No. 160691

Applicant: Brian Meiering, Eugene, Oregon. The applicant request a permit to take (capture and translocate) the Oregon chub (*Oregonichthys crameri*) in conjunction with salvage operations in the State of Oregon for the purpose of enhancing its survival.

Public Review of Comments

We solicit public review and comment on this recovery permit application. 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.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: July 23, 2007.

David Wesley,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. E7–18317 Filed 9–17–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket No. WO–310–1310–PB–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0196

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) plans to request the Office of Management and Budget (OMB) to extend an existing approval to collect information from operators and operating rights owners who apply for designation of National Petroleum Reserve-Alaska (NPRA) unit agreements. We collect nonform information to determine whether to grant approval to operate under a unit plan for NPRA Federal lands. We require operators to retain and provide information to determine whether proposed unit agreements meet the requirements for unitized exploration and development of oil and gas resources of the NPRA.

DATES: You must submit your comments to BLM at the address below on or before November 19, 2007. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may send comments to the OMB, Interior Department Desk Officer (1004–0196), at OMB–OIRA via e-mail *OIRA_DOCKET@omb.eop.gov* or via facsimile at (202) 395–6566. Also please send a copy of your comments to BLM via Internet and include your name, address, and ATTN: 1004–0196 in your Internet message to *comments_washington@blm.gov* or via mail to: U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401LS, 1849 C Street, NW., ATTN:

Bureau Information Collection Clearance Officer (WO–630), Washington, DC 20240.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Barbara Gamble, Division of Fluid Minerals, on (202) 452–0338 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8339, 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Naval Petroleum Reserves Production Act of 1976, as amended (42 U.S.C. 6501 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), and the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.), and 43 CFR subparts, 3133, 3135, 3137, and 3138 require affected oil and gas operators and operating rights owners to maintain records and provide information to apply for suspensions of royalty; apply for suspensions of operations, form and maintain until agreements; and to enter into subsurface storage agreements, respectively. All recordkeeping burdens hours are associated with the nonform information requested.

The reporting burden of each provision for the information collection, including recordkeeping, depends on which information is required. The respondents are oil and gas operators and operating rights owners. The frequency of response varies from one-time only to occasional to routine, depending on activities conducted. We estimated 35 responses per year and 492 total annual burden hours. We base this estimate on our experience managing the program. The table below summarizes our estimates.

Information collection (43 CFR)	Requirement	Hours per response	Number of respondents	Total burden hours
3133.4	Royalty reduction	16	1	16
3135.3	Suspension of operations	8	1	8
3135.6	Notification of operations	4	1	4
3137.23	Unit designation	80	3	240
3137.25	Notification of unit approval	4	3	12
3137.52	Certification for modification	4	1	4
3137.60	Acceptable Bonding	8	3	24
3137.61	Change of unit operator	4	2	8
3137.70	Certification of unit obligation	4	3	12
3137.71	Certification of continuing development	4	3	12
3137.84	Productivity for a PA	12	2	24
3137.87	Unleased tracts	6	1	6
3137.88	Notification of productivity	4	1	4
3137.91	Notification of productivity for non-unit well	4	1	4
3137.92	Production information	4	1	4
3137.112	Lease extension	6	1	6
3137.113	Inability to conduct operations activities	4	2	8
3137.130	Unit termination	4	2	8
3137.135	Impact mitigation	4	3	12
3138.11	Storage agreement	80	1	80
Totals		184	35	492

The BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: September 13, 2007.

Shirlean Beshir,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 07–4613 Filed 9–17–07; 8:45 am]

BILLING CODE 431

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–110]

Meeting of the Central California Resource Advisory Council

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Central California Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held Friday and Saturday, October 26 and 27, 2007, at the Holiday Inn Express, 189 Seaside Avenue, Marina, California. In addition, the RAC will hold an orientation session for new members from 3 p.m. to 5 p.m. on October 25, 2007, at the same location. On October 26, the RAC will convene at 8 a.m. for a business meeting, followed by a field trip to Fort Ord beginning at noon. Members of the public are welcome to attend the tour and meeting. Field tour participants must provide their own transportation and lunch. The RAC will resume its meeting at 8 a.m. on October 27 in the Holiday Inn Express meeting room. Time for public comment is reserved from 9:30 a.m. to 11:30 a.m. on October 27.

FOR FURTHER INFORMATION CONTACT: BLM Hollister Field Office Manager Rick Cooper, (831) 630–5010; or BLM Central California Public Affairs Officer David Christy, (916) 985–4474.

SUPPLEMENTARY INFORMATION: The twelve-member Central California RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues associated with public land management in Central California. At this meeting, agenda items include discussion of issues at Fort Ord and at the Clear Creek Management Area. The RAC will also hear status reports from BLM managers for the Folsom, Hollister, Bakersfield and Bishop field offices. The meeting is open to the public. The public may present written comments to the RAC, and time will be allocated for hearing public comments. Depending on the number of persons wishing to comment and the time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact the BLM as indicated above.

Charge Code: CA 110–1820–XX.

Dated: September 6, 2007.

David Christy,

Public Affairs Officer.

[FR Doc. E7–18313 Filed 9–17–07; 8:45 am]

BILLING CODE 1820–XX–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–538]

In the Matter of Certain Audio Processing Integrated Circuits and Products Containing Same; Notice of Commission Determination To Rescind a Limited Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to rescind the limited exclusion order issued in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clint A. Gerdine, Office of the General Counsel, U.S. International Trade Commission, 500 E. Street, SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E. Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 18, 2005, based on a complaint filed on behalf of SigmaTel, Inc. (''SigmaTel'') of Austin, Texas. 70 **Federal Register** 20172. The complaint alleged violations of section 337 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain audio processing integrated circuits and products containing same by reason of infringement of claim 10 of U.S. Patent No. 6,137,279 (''the '279 patent'') and claim 13 of U.S. Patent No. 6,633,187 (''the '187 patent''). The complaint named a single respondent, Actions Semiconductor Co., Ltd. of Guangdong, China (''Actions''). The complaint further alleged that an industry in the United States exists, as required by subsection (a)(2) of section 337.

On July 8, 2005, the Commission determined not to review an initial determination (''ID'') granting SigmaTel's motion to amend the complaint and notice of investigation to add allegations of infringement of the previously asserted patents and to add an allegation of a violation of section 337 by reason of infringement of claims 1, 6, 9, and 13 of U.S. Patent No. 6,366,522 (''the '522 patent''). On October 31, 2005, the Commission determined not to review an ID granting complainant's motion to terminate the investigation as to the '279 patent.

On March 2006, the presiding administrative law judge (''ALJ'') issued his final ID and recommended determination on remedy and bonding. The ALJ found a violation of section 337 by reason of infringement of claim 13 of the '187 patent by Actions' accused product families 207X, 208X, and 209X, and of claims 1, 6, 9, and 13 of the '522 patent by Actions' accused product families 208X and 209X.

On May 5, 2006, the Commission determined to review the ID and requested submissions regarding the issues under review as well as remedy, the public interest and bonding. On September 15, 2006, the Commission determined that there is a violation of section 337 of the Tariff Act of 1930, as amended, and issued a limited exclusion order prohibiting the importation of Actions' infringing products.

On August 20, 2007, complainant SigmaTel and respondent Actions filed a joint petition to rescind the remedial order under Commission Rule 210.76(a)(1) on the basis of a settlement agreement between the parties. The parties asserted that their settlement agreement constituted ''changed conditions of fact or law'' sufficient to justify rescission of the order under Commission Rule 210.76(a)(1), 19 CFR 210.76(a)(1). The Commission investigative attorney filed a response in support of the petition on August 29, 2007.

Having reviewed the parties' submissions, the Commission has determined that the settlement agreement satisfies the requirement of Commission Rule 210.76(a)(1), 19 CFR 210.76(a)(1), that there be changed conditions of fact or law. The Commission therefore has issued an order rescinding the limited exclusion order previously issued in this investigation.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.76(a)(1) of the Commission's Rules of Practice and Procedure (19 CFR 210.76(a)(1)).

By order of the Commission.

Issued: September 11, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–18206 Filed 9–17–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1124–0006]

National Security Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Exhibit A to Registration Statement (Foreign Agents).

The Department of Justice (DOJ), National Security Division (NSD), 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 19, 2007. 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 write to U. S. Department of Justice, 10th & Constitution Avenue, NW., National Security Division, Counterespionage Section/Registration Unit, Bond Building—Room 9300, Washington, DC 20530. If you need a copy of the collection instrument with instructions, or have additional information, please contact the Registration Unit at 202–514–1216.

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:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Exhibit A to Registration Statement (Foreign Agents).

(3) *The agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* NSD–3. National Security Division, U.S. 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, not-for-profit institutions, and individuals or households. The form is used to register foreign agents as required by the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611, et seq., must set forth the information required to be disclosed concerning each foreign principal, and must be utilized within 10 days of date contract is made or when initial activity occurs, whichever is first.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average response:* The total estimated number of responses is 164 at approximately .49 hours (29 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 80 annual total burden hours associated with this information collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: September 12, 2007.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E7–18322 Filed 9–17–07; 8:45 am]

BILLING CODE 4410–PF–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of petitions for modification of existing mandatory safety standards.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: Comments on the petitions must be received by the Office of Standards, Regulations, and Variances on or before October 18, 2007.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *E-Mail: Standards-Petitions@dol.gov.*
2. *Telefax:* 1–202–693–9441.
3. *Hand-Delivery or Regular Mail:* Submit comments to the Mine Safety and Health Administration (MSHA), Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, VA 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances.

We will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Edward Sexauer, Chief, Regulatory Development Division at 202–693–9444 (Voice), *sexauer.edward@dol.gov* (E-mail), or 202–693–9441 (Telefax), or contact Barbara Barron at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modifications.

II. Petitions for Modification

Docket Number: M–2007–049–C.

Petitioner: Armstrong Coal Company, Inc., 407 Brown Road, Madisonville, Kentucky 42431.

Mine: Big Run Mine, MSHA I.D. No. 15–18552, located in Ohio County, Kentucky.

Regulation Affected: 30 CFR 75.1908(a)(1) (Nonpermissible diesel-powered equipment; categories).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance for the requirement that equipment that cuts or moves rock or coal be included in the category of heavy-duty diesel-powered equipment. Specifically, the Big Run Mine operates a ''mini-trac'' fork lift tractor and will replace the forks with a bucket for limited use. Gas test will be conducted as required under 30 CFR 75.1914(g) (ATX 620 multi-gas detectors) as recommended in the guidelines from the Center for Diesel Research (An Emissions-Assisted Maintenance Procedures for Diesel Equipment, ''Evaluation of Technology to Reduce Diesel Particulates''). These guidelines serve as the basis for the standard operating procedures. The petitioner states that: (1) With the procedures in place, those working in the mine will be in the intake (fresh air) at all times and at no time will any miner be subject to the exhaust emissions generated from the mini-trac; (2) two 20-pound fire extinguishers and 240 pounds of rock dust will be maintained within 150 feet of the mini-trac at all times in addition to the fire suppression system located on the mini-trac; (3) the mini-trac will be used to clean the escapeway on a limited basis only when the mine is idle and when the mine returns back to production, use of the mini-trac with forks attached only for hauling supplies; (4) no more than five miners will be underground while the mini-trac is in use during rehabilitation of the air course; (5) the miners who are underground will be stationed outby the machine and will not be exposed to dust or gases inby during rehabilitation of the air course; and (6) training will be provided to each miner who operates the mini-trac in the proper inspection and recognition of any deficiencies in the use of the equipment. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the standard.

Docket Number: M–2007–050–C.

Petitioner: Chestnut Coal Company, RR 3, Box 142, Sunbury, Pennsylvania 17801.

Mine: # 11 Slope Mine, MHSA I.D. No. 36–09475, located in Northumberland County, Pennsylvania.

Regulation Affected: 30 CFR 49.2(b) (Availability of mine rescue teams).

Modification Request: The petitioner requests a modification of the existing standard to permit the reduction of two mine rescue teams with five members and one alternate each, to two mine rescue teams of three members with one alternate for either team. The petitioner states that the mine is a small anthracite mine and an attempt to utilize five or more rescue team members in the mine's confined working places would result in a diminution of safety to both the miners at the mine and the members of the rescue team. Further, the petitioner states that the mining method used greatly reduces the threat of a disaster and need for rescue teams. The petitioner asserts that the proposed alternative method will in no way provide less than the same measure of protection afforded the miners under the existing standard.

Docket Number: M–2007–051–C.

Petitioner: Chestnut Coal Company, RR 3, Box 142, Sunbury, Pennsylvania 17801.

Mine: #11 Slope Mine, MSHA I.D. No. 36–09475, located in Northumberland County, Pennsylvania.

Regulation Affected: 30 CFR 49.6(a)(1) & (5) (Equipment and maintenance requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of eight self-contained breathing apparatus and eight permissible cap lamps and charging rack instead of using twelve self-contained oxygen breathing apparatus and twelve permissible cap lamps and charging rack at each mine rescue station for its seven member rescue team. The petitioner asserts that the proposed alternative method would not alter, change, or reduce the ability, effectiveness or safety of the underground mine personnel.

Docket Number: M–2007–053–C.

Petitioner: Chestnut Coal Company, RR 3, Box 142, Sunbury, Pennsylvania 17801.

Mine: #11 Slope Mine, MSHA I.D. No. 36–09475, located in Northumberland County, Pennsylvania.

Regulation Affected: 30 CFR 75.360 (Preshift examination at fixed intervals).

Modification Request: The petitioner proposes to modify the application of the standard at its above referenced anthracite coal mine to permit an alternative method of examination and evaluation. The petitioner's intake slope has a pitch of 66 degrees. The petitioner would: (1) Conduct an examination and evaluation from the slope gunboat during the pre-shift examination after an air quantity reading is taken just inby the intake portal, including a visual examination of each seal for physical damage; (2) take an additional air reading and gas test for methane and oxygen deficiency at the intake air split location(s) just off the slope in the gangway portion of the working section; and (3) have the examiner place the date, time and his/her initials at locations where air readings and gas tests are taken prior to anyone entering the mine and properly record the results. The petitioner states that: (1) The slope will be traveled and physically examined in its entire length on a monthly basis regardless of conditions found at the section evaluation point; (2) the dates, times, and examiner's initials will be placed at sufficient locations throughout, and results of the examination will be recorded on the surface; and (3) any hazards detected will be corrected prior to transporting personnel in the slope. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Docket Number: M–2007–054–C.

Petitioner: Chestnut Coal Company, RR 3, Box 142, Sunbury, Pennsylvania 17801.

Mine: #11 Slope Mine, MSHA I.D. No. 36–09475, located in Northumberland County, Pennsylvania.

Regulation Affected: 30 CFR 75.1100–2(a)(2) (Quantity and location of firefighting equipment).

Modification Request: The petitioner requests a modification of the existing standard 30 CFR 75.1100–2(a)(2), which requires that each working section of underground coal mines producing less than 300 tons of coal per shift be provided with specified firefighting equipment and supplies. The equipment and supplies include 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. The petitioner proposes to use portable fire extinguishers only, to replace existing requirements where rock dust, water cars, and other water storage equipped with three 10 quart pails are not practical. The petitioner states that equipping its small anthracite mine with two portable fire extinguishers near the slope bottom and an additional portable fire extinguisher within 500 feet of the working face will provide no less than the same measure of protection as under the existing standard. The mine produces low volatile coal and the working section requires frequent de-watering. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Docket Number: M–2007–055–C.

Petitioner: Chestnut Coal Company, RR 3, Box 142, Sunbury, Pennsylvania 17801.

Mine: #11 Slope Mine, MSHA I.D. No. 36–09475, located in Northumberland County, Pennsylvania.

Regulation Affected: 30 CFR 75.1200(d) & (i) (Mine map).

Modification Request: The petitioner proposes to use cross-sections instead of contour lines through the intake slope at locations of rock tunnel connections between veins, and at 1,000 foot intervals of advance from the intake slope. In addition, the petitioner proposes to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined, except when these veins are interconnected to other veins beyond the 100-foot limit, through rock tunnels. The petitioner states that contours provide no useful information due to the steep pitch encountered in mining anthracite coal veins, and their presence would make portions of the map illegible. The petitioner further states that use of cross-sections in lieu of contour lines has been practiced since the late 1800's and provides critical information about the spacing between veins and the proximity to other mine workings, which fluctuate considerably. Additionally, the petitioner states that the mine workings above and below are usually inactive and abandoned, and therefore not subject to changes during the life of the mine. The petitioner states that all mapping for mines above and below are researched by its contract engineer for the presence of interconnecting rock tunnels between veins in relation to the mine and a hazard analysis is done when mapping indicates the presence of known or potentially flooded workings. The petitioner asserts that when evidence indicates that prior mining was conducted on a vein above or below and research exhausts the availability of mine mapping, the vein will be considered to be mined and flooded and appropriate precautions will be taken under 30 CFR 75.388, where possible. Where potential hazards exist and in-mine drilling capabilities limit penetration, petitioner will drill surface boreholes to intercept the mine workings and will analyze the results prior to mining in the affected area. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Docket Number: M–2007–056–C.

Petitioner: Chestnut Coal Company, RR 3, Box 142, Sunbury, Pennsylvania 17801.

Mine: #11 Slope Mine, MSHA I.D. No. 36–09475, located in Northumberland County, Pennsylvania.

Regulation Affected: 30 CFR 75.1202 and 75.1202–1(a) (Temporary notations, revisions, and supplements).

Modification Request: The petitioner requests a modification of the existing standard to permit the required interval of survey to be established on an annual basis from the initial survey lieu of every 6 months. The petitioner proposes to update the mine map by hand notations on a daily basis, conduct subsequent surveys prior to commencing retreat mining, and when either a drilling program under 30 CFR 75.388 or plan for mining into accessible areas under 30 CFR 75.389 is required. The petitioner states that: (1) Low production and slow rate of advance in anthracite mining make surveying on 6 month intervals impractical and, in most cases, annual development is frequently limited to less than 500 feet of gangway advance with associated up-pitch development; (2) the majority of small anthracite mines are using non-mechanized, hand-loading mining methods; (3) development above the active gangway is designed to mine into the level above at designated intervals thereby maintaining sufficient control between both surveyed gangways; and (4) the available engineering/surveyor resources are very limited in anthracite coal fields which makes surveying difficult to achieve. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Docket Number: M–2007–057–C.

Petitioner: Chestnut Coal Company, RR 3, Box 142, Sunbury, Pennsylvania 17801.

Mine: #11 Slope Mine, MSHA I.D. No. 36–09475, located in Northumberland County, Pennsylvania.

Regulation Affected: 30 CFR 75.1400 (Hoisting equipment; general).

Modification Request: The petitioner proposes to use the slope (gunboat) to transport persons in shafts and slopes using an increased rope strength/safety factor and secondary safety rope connection instead of using safety catches or other no less effective devices. The petitioner asserts that a functional safety catch has not been developed and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Dated: September 12, 2007.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. E7–18367 Filed 9–17–07; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0071)]

Procedures for the Handling of Discrimination Complaints Under Federal Employee Protection Statutes; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits comment concerning its proposal to extend OMB approval of the information collection requirements for handling of discrimination complaints under Federal Employee Protection Statutes contained in regulations at: 29 CFR Part 24, Procedures for the Handling of Discrimination Complaints under Federal Employee Protection Statutes; 29 CFR Part 1979, Procedures for Handling Discrimination Complaints Under Wendell H. Ford Aviation Investment and Reform Act for the 21st Century; 29 CFR Part 1980, Procedures for Handling of Discrimination Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act 2002; and 29 CFR Part 1981 Procedures for the Handling of Discrimination Complaints under Section 6 of the Pipeline Safety and Improvement Act of 2002 (i.e., These Regulations). These regulations set forth procedures employees must use to file a complaint with OSHA alleging that their employer violated a Federal statute that prohibits retaliation against employees who engage in activities protected by the various employee protection statutes.

DATES: Comments must be submitted (postmarked, sent or received) by November 19, 2007.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2007–0071, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., EST.

Instructions: All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2007–0071). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Nilgun Tolek at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Nilgun Tolek, Office of Investigative Assistance, Directorate of Enforcement Programs, OSHA, U.S. Department of Labor, Room N–3610, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2199.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate.

The Agency is responsible for investigating alleged violations of ''whistleblower'' provisions contained in a number of Federal statutes. These provisions prohibit retaliation by employers against employees who report alleged violations of certain laws or regulations. Accordingly, these provisions prohibit an employer from discharging or taking any other retaliatory action against an employee with respect to compensation, or the terms, conditions, or privileges of employment because the employee engages in any of the protected activities specified by the ''whistleblower'' provisions of these Federal statutes.

These Federal statues are covered under the following regulations: 29 CFR Part 24, Procedures for the Handling of Discrimination Complaints under Federal Employee Protection Statutes (29 CFR Part 24 covers: Safe Water Drinking Act, 42 U.S.C. 300j–9(i); Water Pollution Control Act, 33 U.S.C. 1367; Toxic Substances Control Act, 15 U.S.C. 2622; Solid Waste Disposal Act, 42 U.S.C. 6971: Clean Air Act, 42 U.S.C. 7622; Energy Reorganization Act of 1974, 42 U.S.C. 5851; Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610); 29 CFR Part 1979, Procedures for Handling Discrimination Complaints Under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century; 29 CFR Part 1980, Procedures for Handling of Discrimination Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002; and 29 CFR Part 1981 Procedures for the Handling of Discrimination Complaints under Section 6 of the Pipeline Safety and Improvement Act of 2002.

These regulations specify the procedures that an employee must use to file a complaint with OSHA alleging that their employer violated a ''whistleblower'' provision for which the Agency has investigative responsibility. Any employee who believes that such a violation occurred may file a complaint, or have the complaint filed on their behalf. While OSHA specifies no particular form for filing a complaint, these regulations require that a complaint must be in writing and should include a full statement of the acts and omissions, with pertinent dates, which are believed to constitute the violation.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Regulations Containing Procedures for Handling Discrimination Complaints. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Regulations Containing Procedures for Handling Discrimination Complaints.

OMB Number: 1218–0236.

Affected Public: Individuals.

Number of Respondents: 390.

Frequency of Recordkeeping: Once per complaint.

Average Time per Response: 1 hour.

Total Annual Hours Requested: 390.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2007–0071). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''UserTips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506, *et seq.*) and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on September 12, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E7–18314 Filed 9–17–07; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that five meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows (ending times are approximate):

Arts Education (application review): October 2–5, 2007 in Room 716. A portion of this meeting, from 2:30 p.m. to 3 p.m. on October 5th, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on October 2nd–4th, and from 9 a.m. to 2:30 p.m. and 3p.m. to 3:30 p.m. on October 5th, will be closed.

Arts Education (application review): October 10–11, 2007 in Room 716. A portion of this meeting, from 1:30 p.m. to 2 p.m. on October 10th, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 6 p.m. on October 10th, and from 9 a.m. to 1:30 p.m. and 2 p.m. to 3 p.m. on October 11th, will be closed.

Arts Education (application review): October 15, 2007 in Room 716. This meeting, from 9 a.m. to 5:30 p.m., will be closed.

Arts Education (application review): October 22–25, 2007 in Room 716. A portion of this meeting, from 1:15 p.m. to 2 p.m. on October 25th, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 6 p.m. on October 22nd–24th, and from 9 a.m. to 1:15 p.m. and 2 p.m. to 4:30 p.m. on October 25th, will be closed.

Presenting (application review): October 29–30, 2007 in Room 716. This meeting, from 9 a.m. to 5:30 p.m. on October 29th, and from 9 a.m. to 1:30 p.m. on October 30th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 21, 2007, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: September 12, 2007.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E7–18284 Filed 9–17–07; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of September 17, 24, October 1, 8, 15, 22, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 17, 2007

There are no meetings scheduled for the Week of September 17, 2007.

Week of September 24, 2007—Tentative

There are no meetings scheduled for the Week of September 24, 2007.

Week of October 1, 2007—Tentative

Monday, October 1, 2007

1:30 p.m.
Periodic Briefing on Security Issues (Closed—Ex. 1 & 3).

Wednesday, October 3, 2007

2 p.m. Briefing on NRC's International Programs, Performance, and Plans (Public Meeting) (Contact: Karen Henderson, 301–415–0202).

This meeting will be webcast live at the Web address— *http://www.nrc.gov.*

Week of October 8, 2007—Tentative

There are no meetings scheduled for the Week of October 8, 2007.

Week of October 15, 2007—Tentative

There are no meetings scheduled for the Week of October 15, 2007.

Week of October 22, 20007—Tentative

Wednesday, October 24, 2007

1:30 p.m. Periodic Briefing on New Reactor Issues (Public Meeting) (Contact: Roger Rihm, 301–415–7807).

This meeting will be webcast live at the Web address— *http://www.nrc.gov.*

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate inhese public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: September 13, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–4641 Filed 9–14–07; 10:31 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

September 17, 2007 Public Hearing

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 72, Number 176, Page 52169) on September 12, 2007. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing scheduled for 2 p.m., September 17, 2007 in conjunction with OPIC's September 20, 2007 Board of Directors meeting has been cancelled.

Contact Person for Information: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov.*

Dated: September 14, 2007.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 07–4644 Filed 9–14–07; 2:19 pm]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of September 17, 2007:

An Open Meeting will be held on Wednesday, September 19, 2007 at 10 a.m., in the Auditorium, Room L–002. A Closed Meeting will be held on Thursday, September 20, 2007 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Open Meeting scheduled for Wednesday, September 19, 2007 at 10 a.m. will be:

1. The Commission will consider whether to adopt, jointly with the Board of Governors of the Federal Reserve System, new rules under the Securities Exchange Act of 1934 (''Exchange Act'') to implement the Gramm-Leach-Bliley Act bank exceptions to the definition of ''broker.'' In addition, the Commission will consider whether to adopt additional related rules and rule amendments, including rules exempting banks from the definition of ''dealer'' under the Exchange Act.

2. The Commission will consider whether to adopt, on an interim final basis, a temporary rule that would provide investment advisers who also are registered broker-dealers an alternative means of compliance with the principal trading restrictions of section 206(3) of the Investment Advisers Act.

The Commission will also consider whether to propose an interpretive rule under the Investment Advisers Act that would clarify the application of the Advisers Act to certain activities of broker-dealers.

The subject matter of the Closed Meeting scheduled for Thursday, September 20, 2007 will be:

Formal orders of investigations;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Resolution of litigation claims;

Other matters related to enforcement proceedings; and

Adjudicatory matters.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: September 12, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–18312 Filed 9–17–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Federal Register Citation of Previous Announcement: [to be Announced]

STATUS: Closed Meeting.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, September 20, 2007.

CHANGE IN THE MEETING: Additional Item.

The following matter will also be considered during the 2 p.m. Closed Meeting scheduled for Thursday, September 20, 2007:

A litigation matter.

Commissioner Casey, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: September 13, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–18381 Filed 9–17–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Terax Energy, Inc.; Corrected Order of Suspension of Trading

September 12, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Terax Energy, Inc. (''Terax,'' trading symbol TEXG.OB), because of questions regarding the accuracy of assertions by Terax and by others, in reports filed with the Commission and in press releases to investors concerning, among other things: (1) The status of Terax's oil and gas operations, (2) Terax's purported financing agreements, (3) Terax's supposed acquisition of a controlling interest in a foreign oil and gas firm, (4) the existence, terms and status of a purported share exchange agreement between Terax and Westar Oil, Inc., and (5) the identity of the persons in control of the operations and management of Terax.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EDT, September 12, 2007 through 11:59 p.m. EDT, on September 25, 2007.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–18268 Filed 9–17–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56382; File No. SR–Amex–2007–80]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Member Floor Fees

September 11, 2007.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''), and Rule 19b–4 [2] thereunder, notice is hereby given that on August 29, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by the Exchange. Amex has designated the proposed rule change as establishing or changing a due, fee, or other charge applicable only to members, pursuant to section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) [4] thereunder, 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

The Exchange proposes to revise the Amex Floor Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on Amex's Web site at *http://www.amex.com,* at Amex's Office of the Secretary, 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, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects 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 proposal is to adopt various floor fees for services provided by the Exchange to members and member organizations in connection with the installation and management of member technology and computer networks. These services, among other things, include floor facilities, network connectivity, power and telecommunications. The Exchange submits that these changes will be implemented on September 1, 2007.

The Fee Schedule sets forth the various floor fees that the Exchange proposes to adopt on either a one-time, annual or monthly basis as appropriate. The proposal seeks to add three (3) new categories to the Fee Schedule to include (i) Colocation Space, (ii) Amex Port Charges and (iii) Power. In addition, the proposal adds various fees in the Fee Schedule under sections entitled ''Market Data Fees/Terminals,'' ''Equipment'' and ''Telecommunications.''

The section entitled ''Colocation Space'' relates to the Exchange facilities space that is made available to members and member firms for the purpose of managing their own network and computing hardware at the Amex. The proposed fees provide that the members and member firms desiring full cabinet [5] space be assessed a one-time fee of $2,125.00 with an ongoing annual fee of $14,400 ($1,200/month). Alternatively, for a 1/8 cabinet increment, members will be charged a one-time fee of $265.00 with an annual fee of $1,800.00 ($150 per month).

The section entitled ''Amex Port Charges'' are proposed charges for network connectivity. These proposed one-time fees range from $100 to $780 with ongoing annual fees ranging from $792 ($66/month) to $7,020 ($585/month). The proposed connectivity charge will depend on the type of network connectivity.

The section entitled ''Power'' are proposed charges for electrical power that members and member firms may use to supplement the power included in the standard Colocation Space. Proposed charges range from $1,200 a year ($100/month) to $21,912.00 a year

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] ''Full cabinet'' is defined as one (1) 44 rack unit (RU) powered telecommunications cabinet or rack with 33 RU usable space. Standard power is one (1) 20 amperes (amps) 120 volts primary power circuit and one (1) 20 amps 120 volts redundant power circuit per cabinet or rack with 16 amps available per circuit.

($1,826/month). Differences in the proposed fees depend on whether the electrical power is primary or redundant and the specific voltage and amp requirements.

The proposal also adds various charges for market data in the current section entitled ''Market Data Fees/ Terminals.'' These proposed fees range from $113.76 a year ($9.48/month) to $3,120 a year ($260/month). The proposed charges are for fees in connection with various market data services such as Dow Jones and Bloomberg.

With respect to the proposed fee additions to the section entitled ''Equipment,'' members and member firms would be assessed for the use of ''Podia'' [6] and ''MCTV'' [7] in the amount of $1,044 per year ($87/month) and $479.88 per year ($39.99/month), respectively. As provided for in the proposed Floor Fee Schedule, these charges would defray the Exchange's cost of providing this equipment to members. Similarly, the proposed ''Internet Service Fee'' of $840.00 per year ($70/month) in the section entitled ''Telecommunications'' will defray the cost of providing this service to those members and member firms that choose to access the internet through the Exchange.

Lastly, the current ''Floor Wire Privilege Fee'' would be eliminated under the proposal because the proposed charges in connection with ''Amex Port Charges'' apply to network connectivity so that the ''Floor Wire Privilege Fee'' is not necessary.

2. Statutory Basis

The proposed fee change is consistent with section 6(b)(4) of the Act [8] regarding the equitable allocation of reasonable dues, fees and other charges among exchange members and other persons using exchange facilities. The Exchange believes that the proposal is an equitable allocation of reasonable fees/charges among floor members because the fees/charges relating to floor facilities, network connectivity, power and telecommunications are assessed only against those floor members who choose to employ the Exchange's offering of such products/services. In addition, the Exchange submits that the proposed fees/charges are reasonable in connection with the Exchange's offered products/services, and are largely expected to cover the cost to the Exchange of providing such products/ services. Accordingly, the Exchange seeks, through this proposal, to better manage its costs for supplying member technology and computer networks.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not 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 proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act,[9] and Rule 19b–4(f)(2) [10] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange, applicable only to members. 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 Number SR–Amex–2007–80 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–80. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F. Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Amex. 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–Amex–2007–80 and should be submitted on or before October 9, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–18269 Filed 9–17–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56384; File No. SR–NYSE–2007–80]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Elimination of One of its NYSE OpenBook® Services

September 11, 2007.

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 30, 2007, the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed

[6] ''Podia'' refers to an increment of space used by specialists at a trading post.

[7] ''MCTV'' is cable television.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to eliminate one of its NYSE OpenBook® services as described below. The text of the proposed rule change is available at NYSE, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE OpenBook provides market participants with depth-of-market data. It is a compilation of limit order data that the Exchange provides to market data vendors, broker-dealers, private network providers, and other entities through a data feed. For every limit price, NYSE OpenBook includes the aggregate order volume.

Currently, the Exchange provides two NYSE OpenBook services. One of the services updates NYSE OpenBook limit order information every five seconds (the ''Five-Second NYSE OpenBook Service''). The other NYSE OpenBook service updates NYSE OpenBook limit order information in real-time (the ''Real-Time NYSE OpenBook Service''). The Five-Second NYSE OpenBook Service imposes a device fee of $50.00 per month for each terminal through which the end user is able to display the service. The Commission approved the Five-Second NYSE OpenBook Service device fee in December 2001.[3] The Real-Time NYSE OpenBook Service imposes a device fee of $60.00 per month for each such terminal. The Commission approved the Real-Time NYSE OpenBook Service device fee in April 2006.[4] The Exchange is not proposing to modify the NYSE OpenBook device or access fees in this proposed rule change.

In order to minimize customer impact, the Exchange made the business decision to support both versions of OpenBook (the Five-Second NYSE OpenBook Service and the Real-Time NYSE OpenBook Service) for an undefined acceptance period. The Exchange has made the Real-Time NYSE OpenBook Service available for more than a year now. In that time, NYSE OpenBook subscribers have switched from the Five-Second NYSE OpenBook Service to the Real-Time NYSE OpenBook Service. The Exchange states that currently, all recipients of the NYSE OpenBook data feed receive the Real-Time NYSE OpenBook data feed, although a small and dwindling number of them also receive the Five-Second NYSE OpenBook data feed. In addition, more than 99 percent of all end-users of NYSE OpenBook information use Real-Time NYSE OpenBook rather than Five-Second NYSE OpenBook information.

Due to lack of customer demand for the Five-Second NYSE OpenBook Service, the Exchange proposes to eliminate the Five-Second NYSE OpenBook Service, effective October 1, 2007.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] *See* Securities Exchange Act Release No. 44138 (December 7, 2001), 66 FR 64895 (December 14, 2001) (SR–NYSE–2001–42).

[4] *See* Securities Exchange Act Release No. 53585 (March 31, 2006), 71 FR 17934 (April 7, 2006) (SR–NYSE–2004–43).

[5] 15 U.S.C. 78f(b).

[6] 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)(iii) thereunder.[8]

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–2007–80 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–80. This file number should be included on the

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6)(iii). Rule 19b–4(f)(6)(iii) requires the Exchange to give written notice to the Commission of its intent to file the proposed rule change at least five business days prior to filing. The Exchange complied with this requirement.

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 Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–80 and should be submitted on or before October 9, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–18270 Filed 9–17–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56386; File No. SR–OCC–2007–09]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Clearing Fee Reduction

September 11, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 2, 2007, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. 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 proposed rule change would reduce certain OCC clearing 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, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to make additional fee reductions. First, OCC is further reducing its currently discounted standard clearing fee schedule, as described in the following chart.[3]

Contracts/Trade	Current permanent standard fee schedule, effective May 1, 2007	Discounted standard fee schedule, effective May 1, 2007	Discounted standard fee schedule, effective September 1, 2007
1–500	$0.05/contract	$0.035/contract	$0.02/contract.
501–1,000	$0.04/contract	$0.028/contract	$0.016/contract.
1,001–2,000	$0.03/contract	$0.021/contract	$15.00 (capped).
>2,000	$55.00 (capped)	$35.00 (capped)	$15.00 (capped).

Second, OCC is halving the standard market maker scratch fee to one cent per side. The discounted clearing fees and market-maker scratch fees will be effective from September 1 through December 31, 2007. Third, OCC is converting the CBOE Futures Exchange (''CFE'') to its standard rebate-eligible fee schedule, effective September 1, 2007. As a result, clearing fees charged for CFE transactions will be reduced. The outdated alternative fee schedule offered to futures markets also will be eliminated.

The reductions in OCC's clearing fees reflect the strong contract volume experienced by OCC this year to date. OCC believes that these fee changes will financially benefit clearing members and other market participants without adversely affecting OCC's ability to meet its expenses and maintain an acceptable level of retained earnings.

The proposed rule change is consistent with Section 17A of the Act because it benefits clearing members and other market participants by reducing and discounting clearing fees and allocating them in a fair and equitable manner. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change changes fees charged clearing members by OCC, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] The standard fee schedule currently applies to (i) securities options, (ii) security futures where at least one side of the trade is cleared by an OCC Clearing Member, and (iii) commodity futures traded on the Philadelphia Board of Trade.

Act[4] and Rule 19b–4(f)(2)[5] thereunder. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–OCC–2007–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2007–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC. 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–OCC–2007–09 and should be submitted on or before October 9, 2007.

Florence E. Harmon.

Deputy Secretary.

[FR Doc. E7–18271 Filed 9–17–07; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11026]

Arizona Disaster #AZ–00006 Declaration of Economic Injury

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of ARIZONA, dated 09/11/2007.

Incident: Pima County monsoon.

Incident Period: 07/21/2007 through 07/31/2007.

Effective Date: 09/11/2007.

EIDL Loan Application Deadline Date: 06/11/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Pima.

Contiguous Counties:

Arizona: Cochise, Graham, Maricopa, Pinal, Santa Cruz, Yuma.

The Interest Rate is: 4.000.

The number assigned to this disaster for economic injury is 110260.

The State which received an EIDL Declaration # is Arizona.

(Catalog of Federal Domestic Assistance Number 59002).

Dated: September 11, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–18320 Filed 9–17–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11027]

Idaho Disaster #ID–00004 Declaration of Economic Injury

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of IDAHO, dated 09/11/2007.

Incident: Castle Rock Wild Land Fire.

Incident Period: 08/19/2007 and continuing.

Effective Date: 09/11/2007.

EIDL Loan Application Deadline Date: 06/11/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Blaine.

Contiguous Counties:

Idaho: Bingham, Butte, Camas, Cassia, Custer, Elmore, Lincoln, Minidoka, Power.

The Interest Rate is: 4.000.

The number assigned to this disaster for economic injury is 110270.

The State which received an EIDL Declaration # is Idaho.

(Catalog of Federal Domestic Assistance Number 59002).

Dated: September 11, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–18321 Filed 9–17–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11029]

North Dakota Disaster #ND–00011

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Dakota (FEMA–1726–DR), dated 09/07/2007.

Incident: Severe storms and a tornado.

Incident Period: 08/26/2007 through 08/27/2007.

Effective Date: 09/07/2007.

Physical Loan Application Deadline Date: 11/06/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/07/2007, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Grand Forks.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11029.

(Catalog of Federal Domestic Assistance Number 59008)

Jane M. Pease,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E7–18318 Filed 9–17–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11028]

North Dakota Disaster #ND–00010

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Dakota (FEMA–1725–DR), dated 09/07/2007.

Incident: Severe storms and tornadoes.

Incident Period: 07/15/2007.

Effective Date: 09/07/2007.

Physical Loan Application Deadline Date: 11/06/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/07/2007, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Cass, Steele.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11028.

(Catalog of Federal Domestic Assistance Number 59008)

Jane M. Pease,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E7–18319 Filed 9–17–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5908]

Meeting of Advisory Committee on International Communications and Information Policy

The Department of State announces the next meeting of its Advisory Committee on International Communications and Information Policy (ACICIP) to be held on October 11, 2007, from 10 a.m. to 12 p.m., in the Loy Henderson Auditorium of the Harry S. Truman Building of the U.S. Department of State. The Truman Building is located at 2201 C Street, NW., Washington, DC 20520.

The committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communications services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country issues.

The meeting will be led by ACICIP Chair Mr. Richard E. Wiley of Wiley Rein LLP., Ambassador David A. Gross, Deputy Assistant Secretary and U.S. Coordinator for International Communications and Information Policy, and other senior U.S. Government officials will address the meeting.

At this meeting, Ambassador Richard M. Russell will report on the International Telecommunication Union's (ITU) upcoming 2007 World Radiocommunication Conference. In addition, there will be a report on recent bilateral discussions with Brazil's Ministry of Communications, Mexico's Ministry of Communications and Transportation, and Vietnam's Ministry of Information and Communication. There will be discussion on important follow-up work resulting from those talks. The meeting also will focus on upcoming bilateral discussions, including the next meetings of both the U.S.-EU Information Society Dialogue and the U.S.-India Information and Communications Technology (ICT) Working Group.

Members of the public may submit suggestions and comments to the ACICIP. Submissions regarding an event, consultation, meeting, etc. listed in the agenda above should be received by the ACICIP Executive Secretary (contact information below) at least ten working days prior to the date of that listed event. They should be submitted in written form and should not exceed one page for each country (for comments on consultations) or for each subject area (for other comments). Resource limitations preclude acknowledging or replying to submissions.

While the meeting is open to the public, admittance to the Department of State building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, we must receive the following information from you no later than 5 p.m. on Monday, October 8, 2007 (Please note that this information is not retained by the ACICIP Executive Secretary and must therefore be re-submitted for each ACICIP meeting):

I. State That You Are Requesting Pre-Clearance to a Meeting

II. Provide the Following Information:

1. Name of meeting and its date and time
2. Visitor's full name
3. Company/Agency/Organization
4. Title at Company/Agency/Organization
5. Date of birth
6. Citizenship
7. Type of ID visitor will show upon entry (from list below)

- U.S. driver's license with photo
- Passport
- U.S. government agency ID

8. ID number on the ID visitor will show upon entry

Send the above information to Emily Yee by fax (202) 647–5957 or e-mail *YeeE@state.gov*.

Privacy Act Statement: The above information is sought pursuant to 5 U.S.C. 301 and 22 U.S.C. 2651a, 4802(a). The principal purpose for collecting the information is to assure protection of U.S. Department of State facilities. The information provided also may be released to Federal, State or local agencies for law enforcement, counter-terrorism or homeland security purposes, or to other federal agencies for certain personnel and records management matters. Providing this information is voluntary but failure to do so may result in denial of access to U.S. Department of State facilities.

All visitors for this meeting must use the 23rd Street entrance. The valid ID bearing the number provided with your pre-clearance request will be required for admittance. Non-U.S. government attendees must be escorted by Department of State personnel at all times when in the building.

For further information, please contact Emily Yee, Executive Secretary of the Committee, at (202) 647–5205 or *YeeE@state.gov*.

General information about ACICIP and the mission of International Communications and Information Policy at the Department of State is available at our Web site: *http://www.state.gov/e/eeb/adcom/c667.htm*.

Dated: September 11, 2007.

Emily Yee,

ACICIP Executive Secretary, Department of State.

[FR Doc. E7–18366 Filed 9–17–07; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 5905]

U.S. National Commission for UNESCO Notice of Open Teleconference Meeting

SUMMARY: The U.S. National Commission for UNESCO will meet via telephone conference on Thursday, October 4, 2007, from 11 a.m. until 12 p.m. Eastern Time. The purpose of the teleconference meeting is to consider the recommendations of the Commission's World Heritage Tentative List Subcommittee. The Subcommittee was asked to review U.S. applications for the U.S. World Heritage Tentative List. This List will be the basis for U.S. nominations for inscription onto UNESCO's World Heritage List. The recommendations from this discussion will be forwarded from the Department of State to the Department of the Interior. More information on the World Heritage Tentative List process can be found at *http://www.nps.gov/oia/topics/worldheritage/tentativelist.htm.* The Commission will accept brief oral comments during a portion of this conference call. This public comment period will last 15 minutes, and comments are limited to one minute per person. Please note that the opportunity for extended comments may be made through the next phase of the selection process, when the Department of the Interior will post the draft tentative sites in the **Federal Register** for an open comment period. Members of the public who wish to present oral comments or to listen to the conference call must make arrangements with the Executive Secretariat of the National Commission by September 27, 2007. For more information or to arrange to participate in the teleconference meeting, contact Alex Zemek, Deputy Executive Director of the U.S. National Commission for UNESCO, Washington, DC 20037. Telephone: (202) 663–0026; Fax: (202) 663–0035; E-mail: *DCUNESCO@state.gov.*

Susanna Connaughton,

U.S. National Commission for UNESCO, Department of State.

[FR Doc. E7–18365 Filed 9–17–07; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice of Intent To Rule on Request To Release Airport Property at Dallas/Fort Worth International Airport, Texas

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at Dallas/Forth Worth International Airport under the provisions of Title 49, U.S.C. Section 47107.

DATES: Comments must be received on or before October 7, 2007.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Mike Nicely, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76193–0650.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jeff Fegan, Airport Manager at the following address: Dallas/Fort Worth International Airport, 3200 E. Airfield Dr., P.O. Box 619428, DFW Airport, TX 75261–9428.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: On September 6, 2007, the FAA determined that the request to release property at Dallas/Fort Worth International Airport submitted by the Airport met the procedural requirements of the Federal Aviation Regulations, Part 155.

The following is a brief overview of the request:

The Dallas/Fort Worth International Airport requests the release of two tracts of non-aeronautical use airport property. One tract is 0.0274 acres, and the second tract is 2.8736 acres. The 2.8736-acre parcel was acquired by the airport with an Airport Improvement Program (AIP) grant. The land will be traded for the like amount for right of way purposes.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the Dallas/Fort Worth International Airport.

Issued in Fort Worth, Texas on September 10, 2007.

Kelvin L. Solco,

Manager, Airports Division.

[FR Doc. 07–4604 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Submission Deadline for International Arrival Authorizations at Chicago O'Hare International Airport for the Summer 2008 Scheduling Season

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

ACTION: Notice of submission deadline.

SUMMARY: The FAA announces on October 11, 2007, deadline for submitting requests for international Arrival Authorizations at Chicago O'Hare International Airport (ORD) for allocation under 14 CFR 93.29. The deadline coincides with the submission deadline established by the International Air Transport Association (IATA) for the Summer 2008 Schedules Conference.

The U.S. summary scheduling season is from March 9, 2008 through November 1, 2008, in recognition of the U.S. daylight saving time dates. The FAA is aware that the IATA summer 2008 season is March 30, 2008 through October 25, 2008. The FAA will accept schedule changes that coincide with the IATA scheduling season, rather than U.S. daylight saving dates, in order to ease the administrative burdens on carriers conducting international operations and in order to ensure that FAA has the most accurate schedule information. Schedules for the beginning or end of a U.S. scheduling season may be reviewed at the winter or summer schedules conference, as appropriate.

The FAA limits arrivals at ORD from 7 a.m. to 9 p.m., Central Time, Monday through Friday, and 12 p.m. to 9 p.m., on Sunday, based primarily on runway capacity limits. The FAA's restrictions at ORD are the equivalent of a Level 3 Full Coordinated Airport as used in the IATA Worldwide Scheduling Guidelines. Separate schedule facilitation is done at the airport level for international passenger flights operating at Terminal 5. Carriers also should file Terminal 5 schedules, if appropriate, to the address listed in the IATA Worldwide Scheduling Guidelines, Annex 3.

DATES: Requests for international schedule approval must be submitted no later than October 11, 2007.

ADDRESSES: Requests may be submitted by mail to Slot Administration Office, AGC–240, Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; facsimile: 202–267–7277; ARINC: DCAYAXD; or by e-mail to: *7–AWA–slotadmin@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Komal Jain, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number: 202–267–3073.

Issued in Washington, DC on September 12th 2007.

James W. Whitlow,

Deputy Chief Counsel.

[FR Doc. 07–4605 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Hartsfield-Jackson Atlanta International Airport, Atlanta, GA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed Noise Compatibility Program that was submitted for Hartsfield-Jackson Atlanta International 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 City of Atlanta, Georgia. This program was submitted subsequent to a determination by FAA that the associated Noise Exposure Maps submitted under 14 CFR part 150 for Hartsfield-Jackson Atlanta International Airport were in compliance with applicable requirements effective April 10, 2007, and was published in the **Federal Register** on April 23, 2007. The proposed Noise Compatibility Program will be approved or disapproved on or before March 4, 2008.

DATES: *Effective Date:* The effective date of the start of FAA's review of the associated noise compatibility program is September 7, 2007. The public comment period ends November 6, 2007.

FOR FURTHER INFORMATION CONTACT: Scott L. Seritt, Federal Aviation Administration, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337, 404–305–7150. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed Noise Compatibility Program for Hartsfield-Jackson Atlanta International Airport which will be approved or disapproved on or before March 4, 2008. This notice also announces the availability of this program 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 14 CFR 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 has formally received the Noise Compatibility Program for Hartsfield-Jackson Atlanta International Airport, effective on September 7, 2007. The airport operator has requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a Noise Compatibility Program under section 47504 of the Act. Preliminary review of the submitted material indicates that it 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 March 4, 2008.

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 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 FAA's evaluation of the maps, and the proposed Noise Compatibility Program are available for examination at the following locations: Federal Aviation Administration, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in College Park, Georgia, on September 7, 2007.

Scott L. Seritt,

Manager, Atlanta Airports District Office.

[FR Doc. 07–4603 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Open Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Open Meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Thursday, October 11, 2007, starting at 8 a.m. at the Federal Aviation Administration Headquarters Building, 800 Independence Avenue SW., Washington, DC., in the Bessie Coleman Conference Center, located on the 2nd Floor. This will be the forty-sixth meeting of the COMSTAC.

The proposed agenda for the meeting will feature briefings on Operationally Responsive Space and China's space activities, a report on activities in the FAA Office of Commercial Space Transportation (AST), and COMSTAC Working Group reports. An agenda will be posted on the FAA Web site at *http://ast.faa.gov.* Meetings of the COMSTAC Working Groups (Technology and Innovation, Reusable Launch Vehicle, Risk Management, and Launch Operations and Support) will be held on Wednesday, October 10, 2007. For specific information concerning the times and locations of the working group meetings, contact the Contact Person listed below.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Brenda Parker (AST–100), Office of Commercial Space Transportation, 800 Independence Avenue, SW., Room 331, Washington, DC 20591, telephone (202) 267–3674; e-mail *brenda.parker@faa.gov.*

Issued in Washington, DC, September 7, 2007.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 07–4607 Filed 9–13–07; 11:09 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application 07–08–C–00–DCA to impose a Passenger Facility Charge (PFC) at Ronald Reagan Washington National Airport (DCA), Alexandria, Virginia and use the Revenue from the PFC at Washington Dulles International Airport (IAD), Dulles, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Ronald Reagan Washington National Airport (DCA), and use the Revenue from the PFC at Washington Dulles International Airport (IAD) under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 18, 2007.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Washington Airports District Office (ADO), 23723 Air Freight Lane, Suite 210, Dulles, Virginia, 20166.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Lynn Hampton, Chief Financial Officer, Metropolitan Washington Airport Authority at the following address: 1 Aviation Circle, Washington, DC 2001–6000.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Washington Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Luis Loarte, Airport Planner, Washington Airports District Office (ADO), 23723 Air Freight Lane, Suite 210, Dulles, Virginia, 20166, (703) 661–1365.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Ronald Reagan Washington National Airport (DCA), and use the Revenue from the PFC at Washington Dulles International Airport (IAD) under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 21, 2007, the FAA determined that the application to impose and use the revenue from a PFC submitted by Metropolitan Washington Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 21, 2007.

The following is a brief overview of the application.

Proposed charge effective date: January 1, 2011.

Proposed charge expiration date: May 1, 2014.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $124,914,400.

Brief description of proposed project(s): Expansion of the International Arrival Building (IAB).

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non Scheduled/On Demand Air Carriers Filing Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: 159–30 Rockaway Blvd, Jamaica, New York.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Washington Airport Authority.

Issued in Jamaica, New York on September 10, 2007.

William Flanagan,

Manager, Airports Division, Eastern Region.

[FR Doc. 07–4606 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2007–29219]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) to renew an information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on June 27, 2007. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by October 18, 2007.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2007–29219.

FOR FURTHER INFORMATION CONTACT: Gloria Williams, 202–366–5032, Department of Transportation, Federal Highway Administration, Office of Policy and Governmental Affairs, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Certification of Enforcement of the Heavy Vehicle Use Tax.

OMB Control #: 2125–0541.

Background: Title 23 United States Code, Section 141(c), provides that a State's apportionment of funds under 23 U.S.C. 104(b) (5) shall be reduced in an amount up to 25 percent of the amount to be apportioned during any fiscal year beginning after September 30, 1984, if vehicles subject to the Federal heavy vehicle use tax are lawfully registered in the State without having presented proof of payment of the tax. The annual certification by the State Governor or designated official regarding the collection of the heavy vehicle use tax serves as the FHWA's primary means of determining State compliance. The FHWA has determined that an annual certification of compliance by each State is the least obtrusive means of administering the provisions of the legislative mandate. In addition, States are required to retain for 1 year Schedule 1, IRS Form 2290, Heavy Vehicle Use Tax Return (or other suitable alternative provided by regulation). The FHWA conducts compliance reviews at least once every 3 years to determine if the annual certification is adequate to ensure effective administration of 23 U.S.C. 141(c).

Respondents: 50 State Transportation Departments, and the District of Columbia for a total of 51 respondents.

Frequency: Annually.

Estimated Average Annual Burden per Response: The average burden to submit the certification and to retain required records is 12 hours per respondent.

Estimated Total Annual Burden Hours: Total estimated average annual burden is 612 hours.

Electronic Access: Internet users may access all comments received by the U.S. DOT Dockets by using the universal resource locator (URL): *http://dms.dot.gov*, 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: September 11, 2007.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E7–18297 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2007–29228]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) to renew an information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on July 2, 2007. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by October 18, 2007.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2007–29228.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Gillmann, 202–366–0160, Office of Highway Policy Information, Office of Policy and Governmental Affairs, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Preparation and Execution of the Project Agreement and Modifications.

OMB Control Number: 2125–0529 (expiration date September 30, 2007) .

Background: Formal agreements between State Transportation Departments and the FHWA are required for Federal-aid highway projects. These agreements, referred to as ''project agreements'' are written contracts between the State and the Federal government that define the extent of work to be undertaken and commitments made concerning a highway project. Section 1305 of the Transportation Equity Act for the 21st Century (TEA–21, Pub. L. 105–178) amended 23 U.S.C. 106(a) and combined authorization of work and execution of the project agreement for a Federal-aid project into a single action. States continue to have the flexibility to use whatever format is suitable to provide the statutory information required, and burden estimates for this information collection are not changed.

Respondents: There are 56 respondents, including 50 State Transportation Departments, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Territories of Guam, the Virgin Islands and American Samoa.

Frequency: On an on-going basis as project agreements are written.

Estimated Average Annual Burden per Response: There is an average of 476 annual agreements per respondent. Each agreement requires 1 hour to complete.

Estimated Total Annual Burden Hours: 26,656 hours.

Electronic Access: Internet users may access all comments received by the U.S. DOT Dockets by using the universal resource locator (URL): *http://dms.dot.gov,* 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: September 12, 2007.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E7–18299 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: St. Clair County, Michigan

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of availability of and notice of public hearing.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, the Federal Highway Administration has made available for public review and comments a Draft Environmental Impact Statement (DEIS) for the Blue Water Bridge Plaza Study. The DEIS describes and presents the environmental effects of the three alternatives, the No-Build Alternative and three Build Alternatives. A public hearing will be held to receive comments from individuals and organizations on the DEIS.

DATES: Comment and public hearing dates are: 1. October 9, 2007, public hearing scheduled. 2. November 5, 2007, public comments and due.

The DEIS will be available for a 60-day public review period. Oral and written comments will be available for public review. 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 disclosures in their entirety.

ADDRESSES: 1. *Document Availability:* The document was made available to the public on September 10, 2007. Copies of the Draft DEIS are available for public inspection and review on the project Web site *http://www.michigan.gov/bluewaterbridgeproject* and at the following locations:

- Fort Gratiot Township, 3720 Keewahdin Rd., Fort Gratiot.
- Port Huron City of, Office of the City Clerk, 10 McMorran Blvd., Port Huron, MI 48060.
- Port Huron Township, 3800 Lapeer Rd., Port Huron, MI 48060.
- MDOT Region Office, 18101 W. Nine Mile Rd., Southfield, MI 48075.
- MDOT Bureau of Transportation Planning, 425 Ottawa St., Lansing.
- MDOT Port Huron Transportation Service Center, 2127 11th Ave., Port Huron, MI 48060.
- St. Clair County Library, 210 McMorran Blvd., Port Huron, MI 48060.
- St. Clair County Planning Office, St. Clair County Bldg., 20 Grand River Ave., Port Huron, MI 48060.

Copies of the Draft EIS may be requested from Bob Parsons (Public Involvement and Hearings Officer) at the Michigan Department of Transportation, 425 W. Ottawa Street, P.O. Box 30050, Lansing, MI 48909 or by calling (517) 373–9534.

2. *Comments:* Send comments on the Draft EIS to Michigan Department of Transportation, c/o Bob Parsons (Public Involvement and Hearings Officer), 425 W. Ottawa Street, P.O. Box 30050, Lansing, MI 48909.

3. *Public Hearing:* The public hearing will be held at McMorran Place, 701 McMorran Blvd., Port Huron, Michigan 48060. Two sessions will be held, Session 1 from 4 p.m. to 5:30 p.m. and Session 2 from 6:30 p.m. to 8 p.m. Persons needing special assistance to attend and participate in the public hearing should contact Bob Parsons (Public Involvement and Hearings Officer) at (517) 373–9534 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the public hearing. Information regarding this proposed action is available in alternative formats upon request.

FOR FURTHER INFORMATION CONTACT: Major Project Manager: Ryan Rizzo, 517–702–1833. Environmental Program Manager: David T. Williams, 517–702–1820.

SUPPLEMENTARY INFORMATION: The proposed federal action is to expand the Blue Water Bridge Plaza and improve the I–94/I–69 corridor. Improvements are needed on the Blue Water Bridge Plaza to provide safe, efficient and secure movement of people and goods across the Canadian-U.S. border in the Port Huron area to support the economies of Michigan, Ontario, Canada, and the United States and to support the mobility and security needs associated with national and civil defense.

Purpose and Need for the Project: The selected alternative must provide additional space for inspection booths, offices, docks to inspect and unload cargo, new security measures, and parking for cars and trucks needing inspection. The need for additional space and facilities is supported by several key issues including:

- Security issues.
- Introduction of new inspection technologies, procedures, and policies.
- Limited existing space to accommodate increased number of border inspection agents.
- Traffic conflicts and crash history.
- Access between the plaza and adjacent circulatory local roads.
- Traffic growth and traffic backups.
- Existing infrastructure conditions of the I–94/I–69 corridor.
- Upgrading the International Welcome Center.

Alternatives Evaluated: The DEIS evaluates three action alternatives in addition to a No-Build Alternative: City East Alternative, City West Alternative and the Township Alternative.

1. The No-Build Alternative would not make any changes to the existing plaza configuration or ramps. MDOT and CBP would continue to maintain the existing plaza facilities and new technology and procedures would be introduced on the existing plaza

footprint as space allows. The existing welcome center would remain in its current location.

2. The City East Alternative would require 133 acres for an expanded plaza and improvements along the I–94/I–69 corridor including the Welcome Center which includes 67 acres for the plaza. This alternative would require the relocation of Pine Grove Avenue to the east along 10th Avenue and would bring most of the plaza down to street level. Pine Grove Avenue would be re-routed to the east of the existing plaza, between Hancock Street and Scott Avenue. Pine Grove Avenue and 10th Avenue would merge for a joint five-lane road between Scott Avenue and Elmwood Street. The City East Alternative uses the block between Hancock Street and the existing plaza, west of Pine Grove Avenue for an expanded truck inspection area. The Black River Bridge Water Street Interchange would be rebuilt and the Lapeer Connector Interchange would be expanded to include access in all directions. A new MDOT Welcome Center would be constructed north of I–94/I–69 in Port Huron Township, replacing the existing Welcome Center at Water Street.

3. The City West Alternative includes 31 acres for an expanded plaza and improvements along the I–94/I–69 corridor including the Welcome Center which includes 65 acres for the plaza. The City West Alternative would require the relocation of Pine Grove Avenue to the west of the plaza. The relocated Pine Grove Avenue would wrap around the south and west sides of the new plaza. Near Hancock Street, the relocated Pine Grove Avenue would split into separate northbound and southbound lanes. The northbound lanes would turn back east and connect to existing Pine Grove Avenue at Riverview Street. The southbound lanes would follow the existing M–25 Connector. The City West Alternative would use the block bounded by 10th Avenue, Hancock Street, the M–25 Connector, and the existing plaza for expanded inspection and plaza facilities. The City West Alternative would also rebuild the Black River Bridge from a four-lane bridge to nine lanes and reconstruct the Water Street Interchange. The Lapeer Connector Interchange would be expanded to include access in all directions. A new MDOT Welcome Center would be constructed north of I–94/I–69 in Port Huron Township, replacing the existing Welcome Center at Water Street.

4. The Township Alternative involves the relocation of major plaza functions to Port Huron Township, 1.5 miles west of the current facility, on currently undeveloped land. This site also would include a new MDOT Welcome Center. Existing I–94/I–69 lanes west of the plaza and the Blue Water Bridge. The M–25 Connector would be extended to provide a local access road parallel to the existing I–94/I–69 with full access to Water Street and the Lapeer Connector. The Black River Bridge in the Township Alternative would be replaced and expanded from four lanes to ten lanes. While the current plaza footprint would remain the same, local traffic would no longer be able to exist at the existing plaza or use Pine Grove Avenue to access the plaza. Allow inspections would occur at the new plaza in the Township. The Township Alternative would also include traffic related improvements such as additional lanes and turn lanes for key local roads surrounding the existing plaza.

Issued on: September 12, 2007.

James J. Steele,

Division Administrator, Lansing Michigan.

[FR Doc. 07–4611 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Intent To Prepare an Environmental Impact Statement on West 11th Avenue Bus Rapid Transit Corridor in the Eugene-Springfield Metropolitan Area, OR

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA) and Lane Transit District (LTD) intend to prepare an Environmental Impact Statement (EIS) for potential high-capacity transit improvements, including possible bus rapid transit (BRT) improvements, along the West 11th Avenue Corridor in the West Eugene area of the Eugene-Springfield metropolitan region. The project's purposes are to increase mobility and improve safety in the corridor, which runs between Eugene Station and Green Hill Road. The EIS will be prepared in accordance with the National Environmental Policy Act (NEPA) and in compliance with section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (SAFETEA–LU). This Notice alerts interested parties regarding the plan to prepare the EIS, provides information on the nature of the proposed transit project, invites participation in the EIS process (including comments on the scope of the EIS proposed in this notice), and announces upcoming scoping meetings.

DATES: *Comment due date:* Written comments on the scope of the EIS, including the purpose and need for transit improvements in the corridor, the alternatives to be considered, the environmental and community impacts to be evaluated, or any other project-related issues should be sent by November 2, 2007 to Lane Transit District at the address below.

Scoping meeting dates: The first public scoping meeting will be held on October 8 at 3:00 p.m. at the location described in **ADDRESSES** below. Oral and written comments may be given at the scoping meetings.

ADDRESSES: Written comments should be sent to Tom Schwetz, LTD Director of Planning and Development, at PO Box 7070, Eugene, OR 97401 (or by e-mail: *Tom.Schwetz@ltd.org;* or fax: (541) 682–6111). Comments may also be offered at the public scoping meetings. The public scoping meetings will be:

The first public scoping meeting will be: October 8, 2007, 3 to 7 p.m., Elks Lodge #357, 2740 W. 11th Ave., Eugene, OR.

There will be at least one additional public meeting, in January 2008, at a time and place to be announced.

These meeting places are accessible to persons with disabilities. Any individual with a disability who requires special assistance, such as a sign language interpreter, should contact LTD at (541) 682–6100 or by e-mail to *Tom.Schwetz@ltd.org* at least 48 hours in advance of the meeting. A scoping information packet will be available before the meeting on the Lane Transit Web site (*http://www.ltd.org*) or by calling Tom Schwetz, LTD, at (541) 682–6100, and copies will be available at the public scoping meetings.

FOR FURTHER INFORMATION CONTACT: Tom Radmilovich, Community Planner, Federal Transit Administration, Region 10, (206) 220–4463 or *tom.radmilovich@dot.gov.* The LTD Web site, *http://www.ltd.org*, also has project information.

SUPPLEMENTARY INFORMATION:

The proposed project: Known as the West Eugene EmX Extension (WEEE), this project consists of transit and safety improvements from downtown Eugene to about Green Hill Road. The West 11th Avenue Corridor, the primary east/west transit travelshed linking West Eugene to the Eugene Station, contains several major employment centers, large commercial developments, a growing residential population, and valuable natural resources.

The proposed project derives from a Regional Transportation Plan (RTP) (2001, updated 2004) which selected BRT as the preferred transit strategy for the twenty-year plan horizon. The RTP generally identified a comprehensive 61-mile system of several BRT corridors. The Franklin Corridor, already in service, connects downtown Eugene with the University of Oregon and downtown Springfield. The Pioneer Parkway Corridor, now in advanced design, should be in service by 2010. In January 2007, the Eugene City Council and the LTD Board of Directors selected the roughly six-mile-long West 11th Avenue Corridor as the next BRT priority corridor to pursue in Eugene.

Purposes of and need for the proposed project: Recent studies show the need to make improvements in the West 11th Avenue Corridor. Its traffic congestion and safety issues adversely affect general purpose traffic as well as transit. Recent and projected residential, retail, and commercial growth in the corridor make continued degradation probable, although they also have made the area a focus for local and regional land use plans that emphasize nodal and mixed-use development, all aimed at maintaining and improving the area's livability.

The proposed project would: optimize transit service in the West 11th Avenue Corridor; help fulfill the regional mandate for a comprehensive high-capacity transit system; support local and regional land use planning goals encouraging more efficient use of urban land; and support economic development opportunities in the corridor. The project's purpose and need statement will be finalized, using agency and public review and comment, through the scoping process described below.

Environmental process: In accordance with NEPA, SAFETEA–LU section 6002, and FTA's section 5309 New Starts requirements, the project's environmental process has been divided into three general phases: Scoping; Alternatives Analysis/Draft EIS and selection of the Locally Preferred Alternative (LPA); and Final EIS.

(1) *Scoping:* LTD and FTA will use the scoping process to identify participating agencies, and to develop, with the review and comment of participating agencies and the public: (a) The project's purpose and need, (b) the range of alternatives to be studied in the Alternatives Analysis/Draft EIS, and (c) the evaluation methodology, including a determination of the scope of the environmental analysis to be conducted for the EIS. The scoping process will include a variety of public and agency meetings, workshops, open houses, and comment opportunities as presented above under **ADDRESSES**.

Section 6002 of SAFETEA-LU requires that FTA and LTD do the following: (1) Extend an invitation to other federal and non-federal agencies and Indian tribes that may have an interest in the proposed project to become participating agencies; (2) provide an opportunity for involvement by participating agencies and the public in helping to define the purpose and need for a proposed project, as well as the range of alternatives for consideration in the EIS; and (3) establish a plan for coordinating public and agency participation in and comment on the environmental review process. These section 6002 requirements will be wholly or partially satisfied during the scoping process as follows. Invitations to become a participating agency will be sent to agencies after the first Resource Agency Coordination Meeting and Field Tour, planned to occur during late September, where agencies will receive project information and have a chance to determine their level of interest in the project. LTD will create a comprehensive public involvement program and a public and agency involvement Coordination and Communication Plan. The coordination plan will be posted on the project Web site at the end of the scoping process. The public involvement program will include, in addition to the scoping process described above: outreach to local and county officials and community and civic groups; periodic meetings with various local agencies, organizations, and committees; a public hearing after release of the Draft EIS; and distribution of project newsletters and other information pieces.

(2) Alternatives Analysis/Draft EIS: During this phase, LTD and FTA will analyze and document the environmental benefits, costs, and impacts of the alternatives that were selected for further study as a result of the scoping process. Also, the Alternatives Analysis required for New Starts and Small Starts projects will be performed. A combined Alternatives Analysis/Draft EIS documenting the evaluation of alternatives and the environmental evaluations required by NEPA will be published during this phase. Following a formal public hearing on the Alternatives Analysis/Draft EIS and consideration of the comments received, this phase will conclude with selection of the locally preferred alternative, with public and participating agency input, by the Metropolitan Policy Committee, the Eugene City Council, and the LTD Board of Directors.

(3) Final EIS: In preparing the Final EIS, further study necessary to respond to comments on the Draft EIS will be conducted, responses to all comments received will be prepared, and feasible and prudent mitigation identified in the Draft EIS for all adverse environmental and community impacts will be further designed and committed to.

Alternatives: LTD expects to analyze at least three alternatives for the West 11th Avenue improvements. In developing any potential alternative, LTD would seek to enhance ridership potential, reduce costs where feasible, and avoid, minimize and mitigate adverse environmental impacts. The exact alignment of alternatives to be studied will be determined as part of the scoping process, but at a minimum will include a bus-only alternative, an alternative that would extend existing BRT service from Eugene Station to West Eugene, and a Future No-Build Alternative. The alternatives could include a variety of service configurations, design options, and infrastructure improvements. The Future No-Build Alternative would consist of the existing transportation system plus non-BRT improvements to the fixed-route transit system that are planned for and programmed to be implemented by 2030 (in other words, included in the RTP Financially Constrained Transportation Network). The Future No-Build Alternative serves as the NEPA baseline against which the environmental effects of other alternatives will be measured.

Probable effects: NEPA requires LTD and FTA to evaluate the significant impacts of the alternatives selected for study in the Draft EIS. Primary issues identified thus far include support of state, regional and local land use and transportation plans and policies, neighborhood impacts, and environmental sensitivity. The impacts will be evaluated for both the construction period and for the long-term period of operation. Measures to mitigate adverse impacts will be developed.

In accordance with FTA policy and regulations, LTD and FTA will comply with all Federal environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process to the maximum extent practicable. These requirements include, but are not limited to, the regulations of the Council on Environmental Quality and FTA implementing NEPA (40 CFR parts 1500–1508, and 23 CFR Part 771), the project-level air quality conformity regulation of the U.S. Environmental Protection Agency (EPA) (40 CFR part 93), the section 404(b)(1) guidelines of EPA (40 CFR part 230), the regulation implementing section 106 of the National Historic Preservation Act (36 CFR Part 800), the regulation implementing section 7 of the Endangered Species Act (50 CFR part 402), section 4(f) of the DOT Act (23 CFR 771.135), and Executive Orders 12898 on environmental justice, 11988 on floodplain management, and 11990 on wetlands.

Issued on: September 12, 2007.

R.F. Krochalis,

Regional Administrator, Region 10, Federal Transit Administration.

[FR Doc. E7–18339 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2007–28676]

Clearwater Port Liquefied Natural Gas Deepwater Port License Application; Preparation of Environmental Impact Statement/Environmental Impact Report

AGENCY: Maritime Administration, DOT.

ACTION: Notice of intent; notice of public meeting; request for comments.

SUMMARY: The Maritime Administration and the U.S. Coast Guard, in coordination with the California State Lands Commission (CSLC), announce their intent to prepare an environmental impact statement/environmental impact report (EIS/EIR), in connection with this application for a proposed liquefied natural gas (LNG) deepwater port (DWP) that would be located in the Pacific Ocean approximately 10.5 miles offshore of Ventura County, California.

The EIS/EIR will be prepared in coordination with the CSLC because the applicant has filed a land lease application with the CSLC for the construction, use and maintenance of a 36-inch diameter subsea pipeline on submerged lands in State waters to deliver natural gas onshore. The EIS/EIR will meet the requirements of both the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA).

Publication of this notice begins a scoping process that will help identify and determine the scope of environmental issues addressed in the EIS/EIR. This notice requests public participation in the scoping process, provides information on how to participate, and serves as a notice of preparation (NOP) for the purposes of compliance with CEQA.

DATES: Material submitted in response to the request for comments must be received by the Docket Management Facility or the CSLC by October 18, 2007 by 2 p.m. Pacific Daylight Time (see **Request for Comments** and **ADDRESSES** for the address and instructions on how to submit comments). Public meeting dates are October 3, 2007 in Oxnard, California, and October 4, 2007 in Santa Clarita, California.

ADDRESSES: The public meetings and informational open houses will be held at the following times and places:

October 3, 2007

Performing Arts and Convention Center, 800 Hobson Way, Oxnard, California 93030, Telephone: (805) 486–2424.

Public Scoping Meetings: 1:30 p.m. to 3:30 p.m. and 6:30 p.m. to 8:30 p.m.; Open House: 12:30 p.m. to 1:30 p.m. and 5:30 p.m. to 6:30 p.m.

October 4, 2007

Santa Clarita Activities Center, Santa Clarita Room, 20880 Centre Pointe Parkway, Santa Clarita, California 91350, Telephone: (661) 250–3701.

Public Scoping Meeting: 6 p.m. to 8 p.m.; Open House: 4 p.m. to 6 p.m.

The public docket for USCG–2007–28676 is maintained by the Department of Transportation Docket Management Facility. You may submit comments by any of the following methods:

If filing comments by September 27, 2007, please use:

- Web Site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the Department of Transportation Docket Management System electronic docket site. No electronic submissions will be accepted between September 28, 2007, and October 1, 2007.

If filing comments on or after October 1, 2007, use:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Alternatively, you can file comments using the following methods:

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Note that all comments received will be posted without change to *http://dms.dot.gov* or *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* until September 27, 2007, or the street address listed above. The DOT docket may be offline at times between September 28 through September 30 to migrate to the Federal Docket Management System (FDMS). On October 1, 2007, the internet access to the docket will be *http://www.regulations.gov*. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Contact Ray Martin, U.S. Coast Guard, at (202) 372–1449 or e-mail at *Raymond.W.Martin@uscg.mil*; Kevin Tone, U.S. Coast Guard, at (202) 372–1441 or *Kevin.P.Tone@uscg.mil*; Mr. Scott Davies, U.S. Maritime Administration, at (202) 366–2763 or *Scott.Davies@dot.gov*; or contact Crystal Spurr, located in the Sacramento, CA office of the California State Lands Commission, at (916) 574–0748 or e-mail at *spurrc@slc.ca.gov*.

This public notice may be requested in an alternative format, such as Spanish translation, audiotape, large print, or Braille by contacting Crystal Spurr, CSLC, (916) 574–0748 (*spurrc@slc.ca.gov*).

SUPPLEMENTARY INFORMATION: The Maritime Administration and the U.S. Coast Guard, in coordination with the California State Lands Commission (CSLC), announce their intent to prepare an environmental impact statement/environmental impact report (EIS/EIR), in connection with this application for a proposed liquefied natural gas (LNG) deepwater port (DWP) that would be located in the Pacific Ocean approximately 10.5 miles offshore of Ventura County, California. The EIS/EIR will be prepared with the CSLC because the applicant has filed a land lease application with the CSLC for the construction, use and maintenance of a 36-inch diameter subsea pipeline on submerged lands in State waters to deliver natural gas onshore. The EIS/EIR will meet the requirements of both the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). Publication of this notice begins a scoping process that will help identify and determine the scope of environmental review and invites public participation in the scoping process, and provides information on how to participate. This notice also serves as a notice of preparation (NOP) for the purposes of CEQA compliance.

Background

Information about deepwater ports, the statutes and regulations governing licensing, and the receipt of the current application for the proposed Clearwater Port LNG deepwater port appears at 72 FR 50445, August 31, 2007.

Consideration of a deepwater port license application and CSLC land lease application includes review of the proposed environmental impacts. The U.S. Coast Guard, in coordination with the Maritime Administration, determines the scope of this review. In this case, these Federal agencies have determined that review must include preparation of an EIS. The CSLC, as the State lead agency under the CEQA, has determined that an EIR is required. Because of the many similarities between an EIS and an EIR, the U.S. Coast Guard (in coordination with the Maritime Administration) and the CSLC have agreed to cooperate in preparing a single document that satisfies both the NEPA and the CEQA. This notice of intent is required by 40 CFR 1508.22, and briefly describes the proposed action, possible alternatives, and the proposed scoping process. For the State of California's purposes, this notice serves as a notice of preparation, notice of public scoping meetings, and request for comments as described in CEQA Guidelines Section 15082. Address any questions about the proposed action, the scoping process, or the EIS/EIR to the U.S. Coast Guard and CSLC contact persons identified in the **FOR FURTHER INFORMATION CONTACT** section. Comments need not be submitted to more than one agency; all comments received by one agency will be shared with and entered into the record of the other agencies.

Proposed Action/Project Description

Clearwater Port LLC (a subsidiary of NorthernStar Natural Gas Inc.) is proposing to construct Clearwater Port, an offshore liquefied natural gas receiving terminal and regasification facility located in federal waters approximately 10.5 miles offshore of the coast of Oxnard, California in Federal Outer Continental Shelf (OCS) Lease Block OCS–P 0217. Clearwater Port will be comprised primarily of Platform Grace; an offset dual berth (ODB) Satellite Service Platform that would be installed adjacent to Platform Grace for docking of the LNG carriers; and a new 36-inch subsea pipeline to transport vaporized natural gas from the platform connecting at a junction point onshore to a Southern California Gas Company (SoCalGas) pipeline located in Rancho Santa Clara near Camarillo, California. The pipeline would come ashore within the Reliant Energy Mandalay Power Generating Station and connect with a new gas receiving and metering facility.

The onshore components of the project would consist of approximately 63 miles of new pipeline by expanding the SoCalGas pipeline system as follows: A 36-inch pipeline extending 12.9 miles from the Reliant Energy Mandalay Power Generating Station to the existing Center Road Station; a 36-inch pipeline extending 37 miles to loop the existing Line 324 for transport of additional capacities from the Center Road Station to the existing Saugus Station; an 8.75-mile leg of 36-inch pipeline to loop the existing Line 225 for transport of additional capacities from the existing Honor Rancho Station to the Quigley Station; and, a final 4.5-mile leg of 36-inch pipeline to extend the existing Line 3008 (currently from the Quigley Valve Station to the Newhall Valve Station) for transport of additional capacities from the existing Quigley Valve Station to the existing Balboa Station. Contact Crystal Spurr, CSLC, (916) 574–0748 (*spurrc@slc.ca.gov*) to obtain a map of the project location.

The deepwater port would be able to receive approximately 139 LNG carriers annually and accommodate two LNG carriers ranging from 70,000 m^3 to 220,000 m^3 in capacity. The carriers would transfer LNG one carrier at a time through a conventional marine loading arm system to the platform via a cryogenic pipe-in-pipe where it would be regasified by an ambient air vaporizer (AAV) system. The AAV would have the capacity to achieve an average hourly rate of 2300 m^3, an average daily gas send-out of 1.2 Bcfd, and a peak sendout capacity of 1.4 Bcfd. Construction of the deepwater port could be expected to take three (3) years; with start-up of commercial operations following construction, should a Federal license and the required California State lease and permits be issued. The deepwater port would be designed, constructed and operated in accordance with applicable codes and standards and would have an expected operating life of approximately 30 years.

Public Meeting and Open House

We invite you to learn about the proposed deepwater port at an informational open house and comment at a public meeting on environmental issues related to the proposed deepwater port. The comments will help us identify and refine the scope of the environmental issues to be addressed in the EIS/EIR.

Written material may be submitted at the public meeting, either in place of or in addition to speaking. Written material should include your name and address, and will be included in the public docket.

All public meeting locations are wheelchair-accessible. If you plan to attend the open house or public meeting, and need special assistance such as sign language interpretation or other reasonable accommodation, please notify the U.S. Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) at least 3 business days in advance. Include your contact information as well as information about your specific needs.

Request for Comments

We request public comments or other relevant information on environmental issues related to the proposed deepwater port. The public meeting is not the only opportunity to comment. In addition to or in place of attending a meeting, comments can be submitted to the Docket Management Facility during the public comment period (see **DATES**). All comments and materials received during the comment period will be considered. Address comments/docket submissions to either of the following agencies:

Department of Transportation, Docket Management Facility, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Submit your comments by electronic submission to DMS, *http://dms.dot.gov* (or to *http://www.regulations.gov,* if filing comments on or after October 1, 2007) or by fax, mail, or hand delivery to the Docket Management Facility. Faxed or hand delivered submissions must be unbound, no larger than 8½ by 11 inches, and suitable for copying and electronic scanning. If you mail your submission and want to know when it reaches the Facility, include a stamped, self-addressed postcard or envelope. The Docket Management Facility accepts hand-delivered submissions, and makes docket contents available for public inspection and copying at this address, in room W12–140, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility's telephone is 202–366–9329, and its fax is 202–493–2251.

California State Lands Commission, Attn: Crystal Spurr, 100 Howe Avenue, Suite 100 South, Sacramento, California 95825–8202.

The telephone number at the California State Lands Commission is (916) 574–1900, and the fax is (916) 574–1885. You can submit your comments by electronic submissions to the CSLC, *spurrc@slc.ca.gov;* or by fax, mail, or hand delivery to the CSLC. Faxed or hand delivered submissions must be unbound, no larger than 81/2 by 11 inches, and suitable for copying and electronic scanning. If you mail your submission and want to know when it reaches the CSLC, include a stamped, self-addressed postcard or envelope.

Submissions should include:

- Docket number USCG–2007–28676.
- Your name and address.
- Your reasons for making each comment or for bringing information to our attention.

Regardless of the method used for submitting comments or materials, all submissions will be posted, without change, to the DMS Web site (*http://dms.dot.gov*) (or to *http://www.regulations.gov,* if filing comments on or after October 1, 2007), and will include any personal information you provide. Therefore, submitting this information makes it public (see **Privacy Act**).

If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone: 202–493–0402. Additionally, information pertaining to the proposed Clearwater Port is available online at *http://dms.dot.gov* or *http://www.slc.ca.gov.*

Scoping Process

Public scoping is an early and open process for identifying and determining the scope of issues addressed in the EIS/EIR. Scoping begins with this notice, continues through the public comment period and ends when the Coast Guard, Maritime Administration and the CSLC have:

- Invited the participation of Federal, State, and local agencies, any affected Indian tribe, the applicant, and other interested persons;
- Determined the actions, alternatives, and impacts described in 40 CFR 1508.25;
- Identified and eliminated from detailed study those issues that are not significant or that have been covered elsewhere;
- Allocated responsibility for preparing EIS/EIR components;
- Indicated any related environmental assessments or environmental impact statements that are not part of the EIS;
- Identified other relevant environmental review and consultation requirements;
- Indicated the relationship between timing of the environmental review and other aspects of the application process; and
- At the Federal agencies' discretion, exercised the options provided in 40 CFR 1501.7 (b).

Once the scoping process is complete, the Maritime Administration and Coast Guard, in cooperation with CSLC, will prepare a draft EIS/EIR (DEIS/DEIR), and publish a **Federal Register** notice announcing its public availability. To receive that notice, please contact those identified in (**FOR FURTHER INFORMATION**). An opportunity to review and comment on the draft EIS/EIR will be provided. The Maritime Administration, Coast Guard, and CSLC will consider those comments in the preparation of the final EIS/EIR (FEIS/FEIR). As with the draft EIS, we will announce the availability of the FEIS/FEIR and once again provide an opportunity for review and comment.

Availability of EIS/EIR

In addition to the **Federal Register** notice announcing the availability of the DEIS/DEIR, the CSLC will file a notice of completion with the California State Clearinghouse. The DEIS/DEIR in hardcopy or electronic format will be distributed to agencies, local public libraries and interested parties that have requested copies. Comments received during the DEIS/DEIR review period will be available in the public docket and responded to in the FEIS/FEIR. An NOA of the FEIS/FEIR will be published in the **Federal Register**, and the CSLC will issue notices of availability and completion. Additional public meetings will be held after the draft and final documents are published.

Currently Identified Environmental Issues

The EIS/EIR for Clearwater Port will discuss, among other issues: The purpose and need for this LNG project; project alternatives; the no action/no project alternative; the affected environment/baseline; the environmental impacts of the proposed action/project and alternatives; and proposed mitigation measures. The EIS/EIR will assess the impacts of the project and alternatives on the environment, including approving or not approving (no action/no project alternative) the state lease and the federal license to construct and operate the DWP.

Environmental issues that will require detailed analysis include, but are not necessarily limited to:

- Aesthetics—alter the onshore and offshore viewsheds; light and glare;
- Air Quality—onshore and offshore impacts on regional air quality; impacts of greenhouse gas emissions;
- Geological Resources and Soils—impacts from seismic hazards, erosion, and loss of unique paleontological resources;
- Hazardous Materials—impacts from hazardous material spills or pipeline rupture;
- Marine Transportation—impacts on marine traffic;
- Onshore Transportation—impacts from construction traffic and temporary lane closures;
- Marine Biology—impacts on sea turtles, marine mammals, benthic communities, or other special status species;
- Recreation—impacts on boating and commercial and recreational fishing, and impacts on public beach access;
- Hazards and Risk/Safety—impacts from LNG/gas release (The EIS/EIR will include an independent, site-specific risk assessment);
- Noise and Vibration—impacts of noise on local residents, boaters, passengers on marine vessels, fish, sea turtles, and marine mammals;
- Terrestrial Biology—impacts from construction, operation and maintenance activities on biological resources;
- Water Quality—impacts from spills, releases of LNG, erosion;
- Environmental Justice—potential disproportionate effects on minority and low income populations within the Project area;
- Agricultural Resources—impacts on farmland and crops;
- Cultural Resources—impacts on shipwrecks and Native American, archaeological, and historic resources;
- Energy and Mineral Resources—Restriction on the future availability of exploitable oil and gas resources;
- Land Use—potential conflicts with existing land uses;
- Socioeconomics—impacts on community character, population, housing, public services, employment;
- Cumulative Impacts—The EIS/EIR will evaluate the cumulative effects of

the project, if any, associated with each environmental issue area;

• Alternatives—The EIS/EIR will evaluate the No Action/No Project Alternative. Other alternatives that may be analyzed include: Alternative Offshore Locations; Alternative Onshore Locations; Alternative Capacity; Alternative Onshore and Offshore Pipeline Routes; Alternative Methodologies; Alternative Technologies and Design Concepts.

Agency Involvement

The major Federal and State permit, approval, and consultation requirements for Clearwater Port include, but are not necessarily limited to, the following:

Federal:

• DOT/Maritime Administration–DWP license.
• DHS/U.S. Coast Guard–DWP design and operational requirements.
• U.S. Environmental Protection Agency (EPA) Clean Air Act and Clean Water Act (CWA) permits.
• U.S. Army Corps of Engineers (USACE)–Clean Water Act Section 404 and Rivers and Harbors Act Section 10 permits
• U.S. Fish and Wildlife Service–Section 7, Endangered Species Act (ESA) consultation.
• U.S. Department of Defense.
• U.S. State Department.
• U.S. Department of Interior, Minerals Management Service (MMS).
• National Oceanic and Atmospheric Administration (NOAA), Section 7, ESA consultation requirements.
• NOAA Fisheries-Magnuson-Stevens Fisheries Management and Conservation Act consultation.
• NOAA Fisheries-Marine Mammal Protection Act consultation.

California

• California Coastal Commission Compliance with California Coastal Act and consistency with California Coastal Management Program.
• California State Historic Preservation Officer (SHPO), National Historic Preservation Act Section 106 and California historic preservation consultation and compliance.

Privacy Act

The electronic form of all comments received into the DOT docket are available to any person and may be searched by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

(Authority 49 CFR 1.66)

Dated: September 12, 2007.

By Order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–18323 Filed 9–17–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before October 18, 2007.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 12, 2007.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
New Special Permits				
14566–N		Nantog CIMC Tank Equipment Co. Ltd.	49 CFR 178.276(a)(1)	To authorize the manufacture, marking, sale and use of certain UN T50 steel portable tanks manufactured in accordance with Section VIII, Division 1 of the ASME Code. (modes 1, 2, 3).
14569–N		Marine Exchange of Alaska, Juneau, AK.	49 CFR 176.83	To authorize the transportation of certain explosives by cargo vessel in alternative stowage configurations. (mode 3).
14570–N		DuPont SHE Excellence Center, Wilmington, DE, DE.	49 CFR 179.13	To authorize the transportation in commerce of Titanium tetrachloride in DOT specification 105J600W tank car tanks that exceed the maximum allowable gross weight on rail (263,000 lbs.). (mode 2).
14571–N		Dynetek Industries Ltd., Calgary Alberta, Canada.	19 CFR 178.276(a)(1)	To authorize the manufacture, marking, sale and use of DOT–CFFC specification fully wrapped carbon fiber reinforced aluminum lined cylinders mounted in protective framework for use in transporting Division 2.1 and 2.2 hazardous materials. (modes 1, 2, 3, 4, 5).

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14572–N		WEW Westerwaelder Eisenwerk, Weitefeld, Germany.	49 CFR 178.276(b)(1)	To authorize the manufacture, marking, sale, and use of UN T50 tanks designed and constructed in accordance with Section VIII, Division 2 of the ASME code. (modes 1, 2, 3).
14573–N		Polar Tank Trailer, LLC, Holdingford, MN.	49 CFR 178.345–2	To authorize the manufacture, marking, sale and use of cargo tank motor vehicles conforming in all respects to DOT 406, 407 or 412 specification cargo tanks except that the use of UNS S32003 and UNS S32101 stainless steel is authorized. (mode 1).
14574–N		Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 180.407(c), (e) and (f).	To authorize the transportation of certain lined DOT Specification MC 312 and DOT 412 cargo tanks which are not subject to the internal visual inspections for use in transporting certain Class 8 hazardous materials. (mode1).
14575–N		Anderson Chemical Company, Litchfield, MN.	49 CFR 177.848	To authorize the transportation in commerce of certain Division 5.1 oxidizing materials with Class 8 corrosive liquids on the same motor vehicle with alternative segregation requirements. (mode 1).
14576–N		Structural Composites Industries (SCI), Pomona, CA.	49 CFR 173.302a and 173.304a.	To authorize the manufacture, marking, sale and use of aluminum-lines carbon-fiber composite cylinders for use in transporting certain Division 2.1 and 2.2 hazardous materials. (modes 1, 2, 3, 4).
14578–N		Nantong CIMC Tank Equipment Co. Ltd, Kiangsu, China.	49 CFR 178.276	To authorize the manufacture, marking, sale and use of non-DOT specification portable tanks mounted within an ISO frame that have been designed, constructed and stamped in accordance with Section VIII, Division 2 of the ASME Code. (modes 1, 2, 3)
14582–N		Matheson Tri-Gas, Inc., Basking Ridge, NJ.	49 CFR 172.101	To authorize the transportation in commerce of cylinders containing certain compressed gases, for which the proper shipping names have been removed from the Hazardous Materials Regulations, with the old labels and shipping descriptions. (modes 1, 2, 3, 4, 5).

[FR Doc. 07–4601 Filed 9–17–07; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Special Permits Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Delmer F. Billings, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New application.

M—Modification request.

PM—Party to application with modification request.

Issued in Washington, DC, on September 12, 2007.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

Application No.	Applicant	Reason for delay	Estimated date of completion
	MODIFICATION TO SPECIAL PERMITS		
10481–M	M–1 Engineering Limited, Bradford, West Yorkshire	4	10–31–2007
14167–M	Trinityrail, Dallas, TX	1,3,4	0–31–2007
	New Special Permit Applications		
14385–N	Kansas City Southern Railway Company, Kansas City, MO	4	10–31–2007
14442–N	Trinityrail, Dallas, TX	4	10–31–2007
14483–N	WEW Wsterwaelder Eisenwerk, Weitefeld, Germany	4	10–31–2007
14500–N	Northwest Respiratory Services, St. Paul, MN	4	10–31–2007

Application No.	Applicant	Reason for delay	Estimated date of completion
14492–N	Tankbouw Rootselaar B.V., The Netherlands	4	10–31–2007
14457–N	Amtrol Alfa Metalomecanica SA, Portugal	4	10–31–2007
14436–N	BNSF Railway Company, Topeka, KS	4	10–31–2007
14402–N	Lincoln Composites, Lincoln, NE	14	12–31–2007

[FR Doc. 07–4612 Filed 9–17–07; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Modification of Special Permit.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. There applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before October 3, 2007.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://dms.dot.gov*.

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 11, 2007.

Delmer F. Billings,

Director,Office of Hazardous Materials,Special Permits and Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
MODIFICATION SPECIAL PERMITS				
10814–M		Lorad A Hologic Company Danbury, CT.	49 CRR 173.302, 175.3	To modify the special permit to authorize the manufacture, marking, sale and use of an additional industrial X-ray instrumentation for the transportation of nonliquefied sulfur hexafluoxide.
12866–M	RSPA–2001–11096	Delta Airlines, Inc Atlanta, GA.	49 CFR 172.301(c); 173.219(b)(1); 173.302(a); 175.3.	To modify the special permit to authorize the transportation in commerce of an additional Division 2.2 gas.
12899–M	RSPA–2002–11387	Pencor Reservoir Fluid Specialists Broussard, LA.	49 CFR 173.201(c); 173.202(c); 173.203(c); 173.302(a); 173.304(a) and (b); 175.3; 173.34(d), 178.36(a).	To modify the speial permit to remove the volume requirement of § 178.36(a).
13207–M	RSPA–2003–15068	BEI Honolulu, HI	49 CFR 173.32(f)(5)	To modify the special permit to authorize the transportation in commerce of an additional Class 8 material.
13244–M	RSPA–2003–15626	Schlumberger Technology Corporation (Former Grantee: Kihei industries) Houston, TX.	49 CFR 173.302; 173.306(b)(4); 175.3.	To modify the special permit to authorize an increase in operating pressure for certain tube devices authorized in the special permit.
14441–M	PHMSA–2007–27490	B.J. Alan Company Younstown, OH.	49 CFR 173.60	To modify the special permit to authorize additional carriers for the transportation in commerce of certain Division 1.4G fireworks.
14518–M		Alliant Techsystems, Inc. (ATK) Plymouth, MN.	49 CFR 173.62	To reissue the special permit originally issued on an emergency basis for the transportation in commerce of Primers, cap type, UN0044 in non-DOT specification packaging when transported by private carrier for a distance of 10 miles or less.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
14530–M		Sandia National Laboratories Livermore, CA.	49 CFR 173.242	To reissue the special permit originally issued on an emergency basis for the transportation in commerce of a PG III flammable liquid in alternative packaging (a Neutron Scatter Camera) by motor vehicle and cargo vessel.
14531–M		Astar Air Cargo, Inc. Wilmington, OH.	49 CFR Parts 100–180	To reissue the special permit originally issued on an emergency basis for the transportation in commerce of a breath tester in company owned aircraft as unregulated.
14533–M		Skydance Helicopters of Northern Nevada, Inc. Minden, NV.	49 CFR 172.101 Column (9B).	To reissue the special permit originally issued on an emergency basis for the transportation in commerce of certain forbidden explosives by helicopter in remote areas of Utah, Oklahoma, Colorado and Wyoming to seismic drilling sites.
14551–M	PHMSA–2007–28928	Aerojet Redmond, WA	49 CFR 173.56	To reissue the special permit originally issued on an emergency basis for the transportation in commerce of certain explosives as Dangerous Good in Apparatus, UN3363 instead of the EX classification of Cartridge, power device, UN0323.

[FR Doc. 07–4602 Filed 9–17–07; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF THE TREASURY

Office of the General Counsel; Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, Clarissa Potter, Deputy Chief Counsel (Technical).

2. Christopher B. Sterner, Division Counsel (Large and Mid-Size Business).

3. Steve A. Musher, Associate Chief Counsel (International).

4. Frances Regan, Area Counsel (Small Business/Self Employed).

5. James C. Lanning, Area Counsel, (Large and Mid-Size Business).

This publication is required by 5 U.S.C. 4314(c)(4).

Dated: September 13, 2007.

Donald L. Korb,

Chief Counsel, Internal Revenue Service.

[FR Doc. E7–18360 Filed 9–17–07; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the General Counsel; Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, Lily Fu, Deputy General Counsel (Department of Treasury).

2. Kathy Petronchek, Commissioner, Small Business/Self-Employed (Internal Revenue Service).

3. Karen Gilbreath-Sowell, Deputy Assistant Secretary for Tax Policy (Department of Treasury).

This publication is required by 5 U.S.C. 4314(c)(4).

Dated: September 13, 2007.

Donald L. Korb,

Chief Counsel, Internal Revenue Service.

[FR Doc. E7–18358 Filed 9–17–07; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Entities Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing changes to the identifying information associated with five individuals and three entities previously designated pursuant to Executive Order 12978 of October 21, 1995, ''Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers.''

DATES: The changes by the Director of the Office of Foreign Assets Control to the listings of five individuals and three entities previously designated pursuant to Executive Order 12978 are effective on September 12, 2007.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State, to play a significant role in international narcotics trafficking centered in Colombia; or (3) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to this order; and (4) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to this Order.

OFAC has made changes to the identifying information associated with the following five individuals and three entities previously designated pursuant to the Order:

1. OCHOA VASCO, Fabio Enrique (a.k.a. MARTINEZ PEREZ, Juan Carlos; a.k.a. OCHOA VASCO, Carlos Mario; a.k.a. ''CARLOS MARIO''; a.k.a. ''KIKO''; a.k.a. ''KIKO EL CHIQUITO''), Medellin, Antioquia, Colombia; Guadalajara, Jalisco, Mexico; DOB 22 Nov 1960; POB Medellin, Colombia; Cedula Number 79281039 (Colombia) (individual) [SDNT].

2. FLORIDA SOCCER CLUB S.A. (a.k.a. CORPORACION DEPORTIVA FLORIDA SOCCER CLUB; a.k.a. FSC S.A.), Calle 48 No. 70–80 Ofc. 115, Medellin, Colombia; Calle 49B No. 74–31 Sector Estadio, Medellin, Colombia; Itagui, Antioquia, Colombia; NIT # 811046159 (Colombia) [SDNT].

3. INVERSIONES AGROPECUARIA ARIZONA LTDA., Calle 82 No. 43–21 Ofc. 1C, Barranquilla, Colombia; NIT # 802019694 (Colombia) [SDNT].

4. MAYOR COMERCIALIZADORA LTDA., Carrera 40 No. 169–30 Barrio Toberin, Bogota, Colombia; NIT # 80008288–4 (Colombia) [SDNT].

5. MOR GAVIRIA, Carolina, c/o DURATEX S.A., Bogota, Colombia; c/o MOR GAVIRIA Y CIA. S.C.S., Bogota, Colombia; c/o SUPER BOYS GAMES LTDA., Bogota, Colombia; DOB 17 Aug 1985; POB Colombia; Cedula No. 8715520 (Colombia) (individual) [SDNT].

6. MOR GAVIRIA, Jaime, c/o DURATEX S.A., Bogota, Colombia; c/o MOR ALFOMBRAS ALFOFIQUE S.A., Bogota, Colombia; c/o PROMOCIONES E INVERSIONES LAS PALMAS S.A., Bogota, Colombia; c/o SUPER BOYS GAMES LTDA., Bogota, Colombia; c/o GAVIRIA MOR Y CIA. LTDA., Girardot, Colombia; c/o MOR GAVIRIA Y CIA. S.C.S., Bogota, Colombia; DOB 27 Sep 1980; POB Colombia; Cedula No. 92700929 (Colombia); Passport AG443304 (Colombia) (individual) [SDNT].

7. RAMIREZ ESCUDERO, Pedro Emilio, Calle 6A No. 48–36, Cali, Colombia; c/o GALAPAGOS S.A., Cali, Colombia; Cedula No. 16280602 (Colombia) (individual) [SDNT].

8. VALENCIA TRUJILLO, Guillermo, Calle 93A No. 14–17 Ofc. 711, Bogota, Colombia; Calle 93N No. 14–20 Ofc. 601, Bogota, Colombia; Carrera 66 No. 7–31, Bogota, Colombia; Calle 67 Norte No. 8–85, Cali, Colombia; POB Cali, Valle, Colombia; Cedula No. 14942909 (Colombia); Passport 14942909 (Colombia) (individual) [SDNT].

The listings now appear as follows:

1. OCHOA VASCO, Fabio Enrique (a.k.a. GONZALEZ ZAPATA , Antonio; a.k.a. MARTINEZ PEREZ, Juan Carlos; a.k.a. OCHOA VASCO, Carlos Mario; a.k.a. VEGA TOBON, Carlos Mario; a.k.a. ''CARLOS MARIO''; a.k.a. ''KIKO''; a.k.a. ''KIKO EL CHIQUITO''), Medellin, Antioquia, Colombia; Av Miguel Angel 18, Real Vallarta, Zapopan, Jalisco 44020, Mexico; Av Mexico 2867–17, Col Vallarta, Norte, Guadalajara, Jalisco 44690, Mexico; DOB 22 Nov 1960; alt. DOB 20 Nov 1963; POB Medellin, Colombia; Cedula No. 15508422 (Colombia); Cedula Number 79281039 (Colombia); Passport AE063894 (Colombia) (individual) [SDNT].

2. FLORIDA SOCCER CLUB S.A. (a.k.a. CORPORACION DEPORTIVA FLORIDA SOCCER CLUB; a.k.a. FSC S.A.), Calle 48 No. 70–80 Ofc. 115, Medellin, Colombia; Calle 49B No. 74–31 Sector Estadio, Medellin, Colombia; Itagui, Antioquia, Colombia; NIT # 811046159–2 (Colombia) [SDNT].

3. INVERSIONES AGROPECUARIA ARIZONA LTDA., Calle 82 No. 43–21 Ofc. 1C, Barranquilla, Colombia; NIT # 802019694–4 (Colombia) [SDNT].

4. MAYOR COMERCIALIZADORA LTDA., Carrera 40 No. 169–30 Barrio Toberin, Bogota, Colombia; NIT # 800088288–4 (Colombia) [SDNT].

5. MOR GAVIRIA, Carolina, c/o DURATEX S.A., Bogota, Colombia; c/o MOR GAVIRIA Y CIA. S.C.S., Bogota, Colombia; c/o SUPER BOYS GAMES LTDA., Bogota, Colombia; DOB 17 Aug 1985; POB Colombia; Cedula No. 53177751 (Colombia) (individual) [SDNT].

6. MOR GAVIRIA, Jaime, c/o DURATEX S.A., Bogota, Colombia; c/o MOR ALFOMBRAS ALFOFIQUE S.A., Bogota, Colombia; c/o PROMOCIONES E INVERSIONES LAS PALMAS S.A., Bogota, Colombia; c/o SUPER BOYS GAMES LTDA., Bogota, Colombia; c/o GAVIRIA MOR Y CIA. LTDA., Girardot, Colombia; c/o MOR GAVIRIA Y CIA. S.C.S., Bogota, Colombia; DOB 27 Sep 1980; POB Colombia; Cedula No. 11203386 (Colombia); Passport AG443304 (Colombia) (individual) [SDNT].

7. RAMIREZ ESCUDERO, Pedro Emilio, Calle 6A No. 48–36, Cali, Colombia; c/o GALAPAGOS S.A., Cali, Colombia; Cedula No. 16820602 (Colombia) (individual) [SDNT].

8. VALENCIA TRUJILLO, Guillermo, Calle 93A No. 14–17 Ofc. 711, Bogota, Colombia; Calle 93N No. 14–20 Ofc. 601, Bogota, Colombia; Carrera 66 No. 7–31, Bogota, Colombia; Calle 67 Norte No. 8–85, Cali, Colombia; DOB 19 Oct 1947; POB Cali, Valle, Colombia; Cedula No. 14942909 (Colombia); Passport 14942909 (Colombia) (individual) [SDNT].

Dated: September 12, 2007.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E7–18307 Filed 9–17–07; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Senior Executive Service; Combined Performance Review Board (PRB)

AGENCY: Treasury Department, Bureau of the Public Debt.

ACTION: Notice of Members of Combined Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of the members of the Combined Performance Review Board (PRB) for the Bureau of the Public Debt (BPD), the Bureau of Engraving and Printing (BEP), the Financial Management Service (FMS), the United States Mint, and the Alcohol and Tobacco Tax and Trade Bureau (TTB). The Board reviews the performance appraisals of career senior executives below the level of bureau head and principal deputy in the bureaus, except for executives below the Assistant Commissioner/Executive Director level in the Bureau of the Public Debt and Financial Management Service. The Board makes recommendations regarding proposed performance appraisals, ratings, bonuses, pay

adjustments, and other appropriate personnel actions.

Composition of Combined PRB: The Board shall consist of at least three voting members. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. The names and titles of the Combined PRB members are as follows:

Primary Members

Fredrick A. Pyatt, Assistant Commissioner, Office of Management Services, BPD.

Pamela J. Gardiner, Deputy Director, BEP.

Rita Bratcher, Assistant Commissioner, Debt Management Service, FMS.

Jerry Horton, Associate Director, (Chief Information Officer), United States Mint.

John J. Manfreda, Administrator, TTB.

Alternate Members

Anita Shandor, Assistant Commissioner, Office of Financing, BPD.

Scott Wilson, Associate Director, Management, BEP.

Wanda Rogers, Assistant Commissioner, Regional Operations, FMS.

Marty Greiner, Associate Director, (Chief Financial Officer), United States Mint.

Vicky I. McDowell, Deputy Administrator, TTB.

DATES: Membership is effective on September 30, 2007.

FOR FURTHER INFORMATION CONTACT: Angela Jones, Director, Human Resources Division, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–5312, Telephone Number: 304–480–8302.

Dated: September 10, 2007.

Van Zeck,

Commissioner, Bureau of the Public Debt.

[FR Doc. E7–18325 Filed 9–17–07; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Senior Executive Service; Public Debt Performance Review Board (PRB)

AGENCY: Treasury Department, Bureau of the Public Debt.

ACTION: Notice of Members of Public Debt Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of the members of the Public Debt Performance Review Board (PDPRB) for the Bureau of the Public Debt (BPD). The Board reviews the performance appraisals of career senior executives below the level of Assistant Commissioner/Executive Director who are not assigned to the Office of the Commissioner in the Bureau of the Public Debt. The Board makes recommendations regarding proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions.

Composition of the Public Debt PRB: The names and titles of the Public Debt PRB members are as follows:

Primary Members

Nancy Fleetwood, Deputy Commissioner, Office of the Commissioner, BPD.

Anita Shandor, Assistant Commissioner, Office of Financing, BPD.

Cynthia Z. Springer, Executive Director, Administrative Resource Center, BPD.

John R. Swales, III, Assistant Commissioner, Office of Retail Securities, BPD.

Alternate Members

Fredrick A. Pyatt, Assistant Commissioner, Office of Management Services, BPD.

DATES: Membership is effective on September 30, 2007.

FOR FURTHER INFORMATION CONTACT: Angela Jones, Director, Human Resources Division, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–5312, Telephone Number: 304–480–8302.

Dated: September 10, 2007.

Van Zeck,

Commissioner, Bureau of the Public Debt.

[FR Doc. E7–18329 Filed 9–17–07; 8:45 am]

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Federal Register

Tuesday,

September 18, 2007

Part II

Department of Housing and Urban Development

Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2007; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5148–N–02]

Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2007

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on April 1, 2007 and ending on June 30, 2007.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276,Washington, DC 20410–0500, telephone (202) 708–3055 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the second quarter of calendar year 2007.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from April 1, 2007, through June 30, 2007. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Panning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the second quarter of calendar year 2007) before the next report is published (the third quarter of calendar year 2007), HUD will include any additional waivers granted for the third quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: September 7, 2007.

Robert M. Couch,

General Counsel.

Appendix—Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development April 1, 2007 through June 30, 2007

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development

II. Regulatory waivers granted by the Office of Housing

III. Regulatory waivers granted by the Office of Public and Indian Housing

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• Regulations: 24 CFR 91.115(c)(2) and 24 CFR 91.115(i).

Project/Activity: The State of Georgia request to waive regulatory requirements at 24 CFR 91.115(c)(2) and 24 CFR 91.115(i).

Nature of Requirement: Section 91.115(c)(2) of HUD's regulations (24 CFR 91.115(c)(2)) require that a minimum of 30 days be allowed for public comment following an amendment to a state's consolidated plan. Section 91.115(i) requires that the state follows its citizen participation plan. Under a state's citizen participation plan, technical assistance is to be given to groups representative of low- and moderate-income persons that request such assistance in developing proposals for funding assistance under any of the programs covered by the consolidated plan, with the level and type of assistance to be determined by the jurisdiction.

Granted By: Pamela H. Patenaude, Assistant Secretary for Community Planning and Development.

Date Granted: April 4, 2007.

Reason Waived: The storms of March 2007 caused significant damage to commercial and residential buildings in the State of Georgia counties of Baker, Clay, Crawford, McDuffie, Mitchell, Muscogee, Stewart, Sumter, Taylor, Warren, Webster, and Wilkinson (disaster-declared areas). The waiver enabled the State of Georgia to quickly respond to the needs of the affected communities by allowing an expedited public comment period (5 days) for any amendments needed for the consolidated or action plan.

Contact: Diane Lobasso, Director, State and Small Cities Division, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7184, Washington, DC 20410–7000, telephone (202) 402–2191.

• Regulations: 24 CFR 91.115(c)(2) and 24 CFR 91.115(i).

Project/Activity: The State of Kansas request to waive regulatory requirements at 24 CFR 91.115(c)(2) and 24 CFR 91.115(i).

Nature of Requirement: Section 91.115(c)(2) of HUD's regulations (24 CFR 91.115(c)(2)) require that a minimum of 30 days be allowed for public comment following an amendment to a state's consolidated plan. Section 91.115(i) requires that the state follows its citizen participation plan. Under a state's citizen participation plan, technical assistance is to be given to groups representative of low- and moderate-income persons that request such assistance in developing proposals for funding assistance under any of the programs covered by the consolidated plan, with the level and type of assistance to be determined by the jurisdiction.

Date Granted By: Pamela H. Patenaude, Assistant Secretary for Community Planning and Development.

Granted: May 22, 2007.

Reason Waived: HUD recognized that due to the tornado of May 5, 2007, there was significant damage to most of the City of Greensburg located in Kiowa County, Kansas. The waiver enabled the State of Kansas to quickly respond to the needs of the affected area by allowing an expedited public comment period (3 days) for amendments needed for the consolidated or action plan.

Contact: Diane Lobasso, Director, State and Small Cities Division, Office of Block Grant Assistance, Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7184, Washington, DC 20410–7000, telephone (202) 402–2191.

• Regulations: 24 CFR 92.300(a)(1).

Project/Activity: The City of Yakima, Washington, request to waive 24 CFR 92.300(a)(1) of the HOME regulations.

Nature of Requirement: Section 92.300(a)(1) of the HOME program regulations (24 CFR part 92) permits participating jurisdictions (PJs) to award community housing development organizations (CHDOs) to set-aside funds to limited partnerships that include a qualified CHDO as the managing general partner.

Granted By: Pamela H. Patenaude, Assistant Secretary for Community Planning and Development.

Date Granted: May 14, 2007.

Reasons Waived: The City of Yakima proposed to provide HOME CHDO set-aside funds to Next Step Housing, a CHDO. Next Step Housing would, in turn, provide the funds to a limited liability corporation (LLC) which would own and manage the Pear Tree Place apartments. The CHDO would be the sole managing member of the LLC and would have effective project control over its operations. The PJ asserted that the CHDO had the organizational capacity to manage the project.

Contact: Virginia Sardone, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7158, Washington, DC 20410–7000, telephone 202–708–2470.

• Regulation: 24 CFR 570.208(a)(3).

Project/Activity: City of Corpus Christi, Texas, request to waive regulatory requirements of 24 CFR 570.208(a)(3).

Nature of Requirement: The regulation at 24 CFR 570.208(a)(3) requires that at least 51 percent of the units in multifamily residential structures be occupied by low- and moderate-income households. When less than 51 percent of the units in a structure will be occupied by low- and moderate-income households, Community Development Block Grant (CDBG)assistance may be provided in the following limited circumstances provided in 24 CFR 570.208(a)(3)(i): (A) The assistance is for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly rental housing project; (B) Not less than 20 percent of the units will be occupied by low- and moderate-income households at affordable rents; and (C) The proportion of the total cost of developing the project to be borne by CDBG funds is no greater than the proportion of units in the project that will be occupied by low- and moderate-income households.

Granted By: Pamela H. Patenaude, Assistant Secretary for Community Planning and Development.

Date Granted: May 4, 2007.

Reason Waived: The city indicated that the two structures assisted with CDBG funds would have less than 51 percent of the rental units occupied by low- and moderate-income households, but not less than the 20 percent required under the exception provision of 24 CFR 570.208(a)(3)(i). Because the activity to be undertaken would be the rehabilitation and conversion of two structures into multifamily housing, the city requested a regulatory waiver of 24 CFR 570.208(a)(3)(i) which applies only to new construction. The CDBG portion of residential development costs would be no greater than the portion of units occupied by low- and moderate-income households.

Contact: Kimberly Crabb, Community Planning and Development Specialist, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7282, Washington, DC 20410–5000, telephone (202) 402–4521.

II. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• Regulation: 24 CFR Section 200.217(a)(5).

Project/Activity: FHA Project 117–13003 Moore Medical Center, Moore, Oklahoma

Nature of Requirement: Electronic submission of Previous Participation Certificates HUD–2530).

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: January 8, 2007.

Reason Waived: A waiver was granted in order to expedite the sale of Moore Medical Center to a new owner. Implementation of an electronic system to which the HUD–2530 applications were submitted was delayed and problematic. A delay in the previous participation clearance process would have increased the risk of a claim. Also, the financial viability of the facility improved by having the new owner-operator take over hospital operations quickly.

Contact: John Whitehead, Director, Program Support Division, Office of Insured Health Care Facilities, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9224, Washington, DC 20410–8000, telephone (202) 708–0599.

• Regulation: 24 CFR 203.41(d).

Project/Activity: First Homes Properties, Inc., Rochester, Minnesota.

Nature of Requirement: Section 203.41(b) of HUD's regulations in Title 24 of the Code of Federal Regulations provide that a mortgage shall not be eligible for insurance if the mortgaged property is subject to legal restrictions on conveyance. Exceptions for legal restrictions on conveyance are made for eligible governmental or nonprofit programs designed to promote low- and moderate-income housing, in 24 CFR 203.41(c). Section 203.41(d) specifies that a violation of legal restrictions on conveyance may not be grounds for acceleration of the insured mortgage or for voiding a conveyance of the property, terminating the mortgagor's interest in the property, or subjecting the mortgagor to contractual liability other than requiring repayment of assistance provided to make the property affordable as low-or moderate-income housing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 27, 2007.

Reason Waived: The waiver granted pertained to the restriction that a violation of legal restrictions on conveyance may not be grounds for voiding a conveyance of the mortgagor's interest in the property. There is a critical need in the Rochester, Minnesota area for low- and moderate-income housing. This waiver permitted First Homes Properties to void property transfers that are not in accordance with the requirements of the First Homes Ground lease, and acquire the property or otherwise ensure its conveyance to another low-or moderate-income homebuyer.

Contact: Maynard T. Curry, Housing Program and Policy Specialist, Office of Single Family Program Development, Rm. 9266, U. S. Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410.

• Regulation: 24 CFR 206.27(c).

Project/Activity: Insured loan under the Home Equity Conversion Mortgage (HECM) Program.

Nature of Requirement: Section 255 of the National Housing Act establishes the Home Equity Conversion Mortgage Program for Elderly Homeowners. Section 255(j) provides that the Secretary may not insure a home equity conversion mortgage under this section unless the mortgage provides that the homeowner's obligation to satisfy the loan obligation is deferred until the homeowner's death, the sale of the home or the occurrence of other events specified in regulations of the Secretary. HUD's implementing HECM regulations are codified in 24 CFR part 206. Section 206.27(c) specify the other events and provides in part, ''The mortgagee shall state that ''The mortgage balance will be due and payable in full if a mortgagor dies and the property is not the principal residence of at least one surviving mortgagor.'' The regulation clarifies that a homeowner's mortgage balance will be due and payable upon his or her death if the surviving spouse is also not a mortgagor of the property.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 2007.

Reason Waived: The regulation was waived to allow an elderly spouse to become a mortgagor on an HECM loan, after her husband's death since she met the age requirement.

Contact: Laurie A. Maggiano, Deputy Director, Office of Single Family Asset Management, Rm. 9176, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410.

• Regulation: 24 CFR 219.220(b).

Project/Activity: Pittsburgh, Pennsylvania (Fountain Court Consumer Housing Cooperative, Project Numbers 044–44197, 044–55086, 044–55182 and 044–55186). The Detroit Multifamily Hub requested waiver of this regulation to allow for the re-amortization of the outstanding Flexible Subsidy debt with a new mortgage to refinance the mortgages on the properties with a non-insured lender.

Nature of Requirement: HUD regulations at 24 CFR 219.220(b) govern the repayment of assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996, requiring that assistance paid to project owners must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage or at sale of the project. Section 5.110 of HUD's regulations relates to admission of families to projects for elderly or handicapped families that received reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 12, 2007.

Reason Waived: The waiver was granted to allow modification of the terms of the flexible subsidy loan to prevent the property falling into serious disrepair. The waiver would allow the amortization of the Flexible Subsidy debt with a new mortgage to refinance the mortgages on the subject property with a non-insured lender. Although the properties have consistently received REAC scores above 60, the properties are 35 years old and require renovations to continue as well-maintained sources of affordable housing. The properties have provided affordable owner-cooperative housing since 1972. The Cooperative has maintained affordability under the Section 236 and 221(d)(3) BMIR program. The Cooperative requested permission to prepay the FHA-insured loans, address the physical needs, fully retire the Flexible Subsidy debt by annual payments of $76,000 scheduled over the new 30-year mortgage; and deposit $100,000 into the Cooperative's Reserve for Replacement account. The Cooperative will continue to operate after prepayment under a new Use Agreement preserving this affordable housing for low- and moderate-income residents until December 1, 2043.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000; telephone (202) 708–3730.

• Regulation: 24 CFR 401.461.

Project/Activity: The following project listed below requested a waiver to the simple interest requirement on the second mortgage to allow compound interest at the applicable Federal Rate. (24 CFR 401.461):

FHA No.	Project	State
04344088	Maplewood Apartments.	OH

Nature of Requirement: Section 401.461 requires that the second mortgages have an interest rate not more than the applicable Federal Rate. Section 401.461(b)(1) states that interest will accrue but not be compound. The intent of simple interest instead of compound interest is to limit the size of the second mortgage accruals to increase the likelihood of long-term financial and physical integrity.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 25, 2007.

Reason Waived: This regulatory restriction would be construed as a form of federal subsidy, thereby creating a loss of tax credit equity. This loss would adversely affect the ability to close the Restructuring Plan and could have caused the loss or deterioration of these affordable housing projects. Therefore, compound interest was necessary for the owner to obtain low-income housing tax credits under favorable terms and in order to maximize the savings to the federal government.

Contact: John E. Hall, Office of Affordable Housing Preservation, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–402–2342.

• Regulation: 24 CFR 401.461.

Project/Activity: The following project listed below requested a waiver to the simple interest requirement on the second mortgage to allow compound interest at the applicable Federal Rate. (24 CFR 401.461):

FHA No.	Project	State
04335178	Northwood Apartments.	OH

Nature of Requirement: Section 401.461 requires that the second mortgages have an interest rate not more than the applicable Federal Rate. Section 401.461(b)(1) states that interest will accrue but not be compound. The intent of simple interest instead of compound interest is to limit the size of the second mortgage accruals to increase the likelihood of long-term financial and physical integrity.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: March 12, 2007.

Reason Waived: This regulatory restriction would be construed as a form of federal subsidy, thereby creating a loss of tax credit equity. This loss would adversely affect the ability to close the Restructuring Plan and could have caused the loss or deterioration of these affordable housing projects. Therefore, compound interest was necessary for the owner to obtain low-income housing tax credits under favorable terms and in order to maximize the savings to the federal government.

Contact: John E. Hall, Office of Affordable Housing Preservation, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–402–2342.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Hillcrest Senior Housing, Daly City, CA, Project Number: 121–EE180/CA39–S051–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing–Federal Housing Commissioner.

Date Granted: March 30, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: The Marion Corner Apartments, Carthage, IL, Project Number: 072–EE162/IL06–S051–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing–Federal Housing Commissioner.

Date Granted: April 4, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Prairie Achievement Center, Monmouth, IL, Project Number: 072–HD145/IL06–Q051–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing–Federal Housing Commissioner.

Date Granted: April 17, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Hickory Estates, Hermitage, MO, Project Number: 084–EE062/MO16–S051–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing–Federal Housing Commissioner.

Date Granted: April 25, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Brook Oaks Senior Residences, Waco, TX, Project Number: 113–EE048/TX16–S051–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing–Federal Housing Commissioner.

Date Granted: May 7, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Gulfport Manor, Gulfport, MS, Project Number: 065–EE031/MS26–S001–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 7, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Capitol Heights Place II, Montgomery, AL, Project Number: 062–EE076/AL09–S051–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 7, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Black Diamond Hope House, Smyrna, DE, Project Number: 032–HD033/DE26–Q051–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing–Federal Housing Commissioner.

Date Granted: May 8, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Reba Brown Senior Residence, Philadelphia, PA, Project Number: 034–EE141/PA26–S051–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing–Federal Housing Commissioner.

Date Granted: May 10, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Rogers Supportive Housing, Rogers, MN, Project Number: 092–HD067/MN46–Q051–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing–Federal Housing Commissioner.

Date Granted: May 10, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: St. Joseph Garden Courts, Inc., Orlando, FL, Project Number: 067–EE138/FL29–S051–007.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing–Federal Housing Commissioner.

Date Granted: May 14, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Pine Ridge Drive Group Home, Louisa, VA, Project Number: 051–HD130/VA36–Q041–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing–Federal Housing Commissioner.

Date Granted: May 18, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: The Water Oaks Incorporated, Reynolds, GA, Project Number: 061–EE149/GA06–S051–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 23, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: LaPalma Apartments, Miami, FL, Project Number: 066–EE093/FL29–S021–014.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 23, 2007.

Reason Waived: The project is economically designed and the cost appears reasonable as there are no other four unit group homes in the area to compare costs, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: ASI Mobile, Mobile, AL, Project Number: 062HD058/AL09–Q051–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 23, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Paschall Senior Housing, Philadelphia, PA, Project Number: 034–EE145/PA26–S051–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 23, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Baldwin Village, Steelton, PA, Project Number: 034–HD088/PA26–Q051–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 23, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Walter Gum Manor, Orange, VA, Project Number: 051–EE101/VA36–S031–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 29, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Applewood III, Lawrence, GA, Project Number: 061–EE155/GA06–S051–008.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 1, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Developmental Pathways, Incorporated, Aurora, CO, Project Number: 101–HD043/CO99–Q051–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 6, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, the sponsor/owner exhausted all efforts to obtain additional funding from other sources and the additional cost was due to increased construction costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Maynor Street Group Home, Rocky Mount, VA, Project Number: 051–HD126/VA36–Q041–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 6, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, the sponsor/owner exhausted all efforts to obtain additional funding from other sources and the additional cost was due to increased construction costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Allegre Point Senior Residences, Incorporated, Decatur, GA, Project Number: 061–EE148/GA06–S051–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 8, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, the sponsor/owner exhausted all efforts to obtain additional funding from other sources and the additional cost was due to increased construction costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Murphy Lake Apartments, Warrensburg, MO, Project Number: 084–EE065/MO16–S051–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 12, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, the sponsor/owner exhausted all efforts to obtain additional funding from other sources and the additional cost was due to increased construction costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Burlington Disabled Housing, Burlington, WI, Project Number: 075–HD088/WI39–Q041–007.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 18, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, the sponsor/owner exhausted all efforts to obtain additional funding from other sources and the additional cost was due to increased construction costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: White River Senior Housing, Buckley, WA, Project Number: 127–EE055/WA19–S051–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 18, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, the sponsor/owner exhausted all efforts to obtain additional funding from other sources and the additional cost was due to increased construction costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Parker View Apartments, Project Number: 051–EE103/VA3616–S041–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 18, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, the sponsor/owner exhausted all efforts to obtain additional funding from other sources and the additional cost was due to increased construction costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: John L. Rankin Senior Living, Russellville, AR, Project Number: 082–EE171/AR37–S051–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 20, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, the sponsor/owner exhausted all efforts to obtain additional funding from other sources and the additional cost was due to increased construction costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Lafayette VOA Housing, Lafayette, GA, Project Number: 061–HD100/GA06–S051–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 21, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, the sponsor/owner exhausted all efforts to obtain additional funding from other sources and the additional cost was due to increased construction costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Deer Haven Group Home, Buena Vista, VA, Project Number: 051–HD135/VA36–Q051–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 21, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, the sponsor/owner exhausted all efforts to obtain additional funding from other sources and the additional cost was due to increased construction costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Supportive Housing Development, Matteson, IL, Project Number: 071–HD147/IL06–Q041–010.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 26, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, the sponsor/owner exhausted all efforts to obtain additional funding from other sources and the additional cost was due to increased construction costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Mary Griffith, Heavener, OK, Project Number: 118–HD036/OK56–Q051–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 29, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, the sponsor/owner exhausted all efforts to obtain additional funding from other sources and the additional cost was due to increased construction costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Sue Littlejohn House, McAlester, OK, Project Number: 118–HD034/OK56–Q051–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 29, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, the sponsor/owner exhausted all efforts to obtain additional funding from other sources and the additional cost was due to increased construction costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Dana's Garden, Shawnee, OK, Project Number: 117–HD037/OK56–Q061–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 29, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, the sponsor/owner exhausted all efforts to obtain additional funding from other sources and the additional cost was due to increased construction costs.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.130.

Project/Activity: Nuiqsut, Alaska, Nuiqsut, AK, Project Number: 176–EE033/AK06–S021–008.

Nature of Requirement: Section 891.130 prohibits officers and board members of the project's sponsor and owner from having any financial interest in any contract with the owner or any firm which has a contract with the owner. It also prohibits an identity of interest between the sponsor or owner with development team members or between development team members until two years after final closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 5, 2007.

Reason Waived: The leasing of the site from the Village Corporation, to which all of the directors of the owner have an interest acquired under the Indian Claims Settlement Act, was approved because it is being leased for $1 and there is a lack of suitable sites in the community. The general contractor, of which the Village Corporation owns 51 per cent of the shares, was approved because of the specialized experience of the contractor for constructing in the community, the benefit to the community in providing employment opportunities for the local labor force, and the isolated location of the community.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.130.

Project/Activity: Kaktovic, Alaska, Wainwright, AK, Project Number: 176–EE032/AK06–S021–007.

Nature of Requirement: Section 891.130 prohibits officers and board members of the project's sponsor and owner from having any financial interest in any contract with the owner or any firm which has a contract with the owner. It also prohibits an identity of interest between the sponsor or owner with development team members or between development team members until two years after final closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 10, 2007.

Reason Waived: The leasing of the site from the Village Corporation, to which all of the directors of the owner have an interest acquired under the Indian Claims Settlement Act, was approved because it is being leased for $1 and there is a lack of suitable sites in the community. The general contractor, of which the Village Corporation owns 51 percent of the shares, was approved because of the specialized experience of the contractor for constructing in the community, the benefit to the community in providing employment opportunities for the local labor force, and the isolated location of the community.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.130.

Project/Activity: Anaktuvuk Pass, Alaska, Anaktuvuk, AK, Project Number: 176–EE030/AK06–S021–005.

Nature of Requirement: Section 891.130 prohibits officers and board members of the project's sponsor and owner from having any financial interest in any contract with the owner or any firm which has a contract with the owner. It also prohibits an identity of interest between the sponsor or owner with development team members or between development team members until two years after final closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 17, 2007.

Reason Waived: The leasing of the site from the Village Corporation, to which all of the directors of the owner have an interest acquired under the Indian Claims Settlement Act, was approved because it is being leased for $1 and there is a lack of suitable sites in the community. The general contractor, of which the Village Corporation owns 51 per cent of the shares, was approved because of the specialized experience of the contractor for constructing in the community, the benefit to the community in providing employment opportunities for the local labor force, and the isolated location of the community.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban

Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.130.

Project/Activity: Point Hope, Alaska, Point Hope, AK, Project Number: 176–EE029/AK06–S021–004.

Nature of Requirement: Section 891.130 prohibits officers and board members of the project's sponsor and owner from having any financial interest in any contract with the owner or any firm which has a contract with the owner. It also prohibits an identity of interest between the sponsor or owner with development team members or between development team members until two years after final closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 17, 2007.

Reason Waived: The leasing of the site from the Village Corporation, to which all of the directors of the owner have an interest acquired under the Indian Claims Settlement Act, was approved because it is being leased for $1 and there is a lack of suitable sites in the community. The general contractor, of which the Village Corporation owns 51 per cent of the shares, was approved because of the specialized experience of the contractor for constructing in the community, the benefit to the community in providing employment opportunities for the local labor force, and the isolated location of the community.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.130.

Project/Activity: Wainwright, Alaska, Wainwright, AK, Project Number: 176–EE031/AK06–S021–006.

Nature of Requirement: Section 891.130 prohibits officers and board members of the project's sponsor and owner from having any financial interest in any contract with the owner or any firm which has a contract with the owner. It also prohibits an identity of interest between the sponsor or owner with development team members or between development team members until two years after final closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 17, 2007.

Reason Waived: The leasing of the site from the Village Corporation, to which all of the directors of the owner have an interest acquired under the Indian Claims Settlement Act, was approved because it is being leased for $1 and there is a lack of suitable sites in the community. The general contractor, of which the Village Corporation owns 51 per cent of the shares, was approved because of the specialized experience of the contractor for constructing in the community, the benefit to the community in providing employment opportunities for the local labor force, and the isolated location of the community.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.130(a).

Project/Activity: Victory Cathedral Elderly Housing, Hartford, CT, Project Number: 017–EE098/CT26–S061–002.

Nature of Requirement: Section 891.130(a) prohibits an identity of interest between the Sponsor or Owner with development team members or between development team members until two years after final closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 4, 2007.

Reason Waived: The seller of the land, although a member of the Sponsor's Board, donated the site, with the exception of a $10 transfer fee.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000

• Regulation: 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Blanche Johnson Courtyards (aka Park Villas Casitas), Tucson, AZ, Project Number: 123–EE098/AZ20–S041–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 17, 2007.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing Urban Development, 451 Seventh Street, SW., Room 6134, Washington DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Touchette Elderly Apartments Phase II, East St. Louis, IL, Project Number: 072–EE156/IL06–S041–010.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 1, 2007.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing Urban Development, 451 Seventh Street, SW., Room 6134, Washington DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: AHEPA 302 Apartments, San Bernardino, CA, Project Number: 143–EE056/CA43–S041–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 1, 2007.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing Urban Development, 451 Seventh Street, SW., Room 6134, Washington DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d) and 24 CFR 891.165.

Project/Activity: Maple House, Harrison, NY, Project Number: 012–HD104/NY36–Q011–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 18, 2007.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing Urban Development, 451 Seventh Street, SW., Room 6134, Washington DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.
Project/Activity: TBD, Burlington, WI, Project Number: 075–HD088/WI39–Q041–007.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: April 5, 2007.
Reason Waived: The sponsor/owner needed additional time to review the updated bids and select a contractor, for the firm commitment to be issued, and for the project to be initially closed.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.
Project/Activity: Aliff Place, Fort Gay, WV, Project Number: 045–HD040/WV15–Q041–002.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: April 5, 2007.
Reason Waived: The sponsor/owner needed additional time for the City to obtain the resources to pave the street and for the project to be initially closed.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.
Project/Activity: Corozal Hope for the Elderly, Corozal, PR, Project Number: 056–EE064/RQ46–S041–001.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: April 5, 2007.
Reason Waived: The sponsor/owner needed additional time to locate another site because the original site was determined to be subject to landslides.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.
Project/Activity: Abilities at English Park, Melbourne, FL, Project Number: 067–HD095/FL29–Q041–002.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: April 10, 2007.
Reason Waived: The sponsor/owner needed additional time for initial closing to take place.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.
Project/Activity: NCR of Alief II, Houston, TX Project Number: 114–EE120/TX24–S041–008.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: April 17, 2007.
Reason Waived: The sponsor/owner needed additional time to finalize closing documents and for the project to be initially closed.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.
Project/Activity: Gulfport Manor, Gulfport, MS, Project Number: 065–EE031/MS26–S001–002.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: April 17, 2007.
Reason Waived: The sponsor/owner needed additional time for the building permit to be obtained and for the project to be initially closed.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.
Project/Activity: Supportive Housing Development, Matteson, IL, Project Number: 071–HD147/IL06–Q041–010.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: April 23, 2007.
Reason Waived: The sponsor/owner needed additional time to finalize closing documents and for the project to be initially closed.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.
Project/Activity: Senior Residence at Kapolei, Kapolei, Oahu, Hawaii, Project Number: 140–EE024/HI10–S011–001.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: April 25, 2007.
Reason Waived: The sponsor/owner needed additional time for the building permit to be obtained and for the project to be initially closed.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.
Project/Activity: Mt. Olive Manor II, Flanders, NJ, Project Number: 031–EE064/NJ39–S041–002.
Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.
Date Granted: April 30, 2007.
Reason Waived: Due to litigation, the sponsor/owner needed additional time to reach initial closing.
Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban

Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Lutheran Social Services of North Florida, Inc., Tallahassee, FL, Project Number: 063–HD021/FL29–Q041–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 7, 2007.

Reason Waived: The sponsor/owner needed additional time to secure necessary local approvals from the City, for the firm commitment to be issued, and the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Magnolia Heights Retirement Community, Mansfield, TX, Project Number: 113–EE036/TX16–S031–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 14, 2007.

Reason Waived: The sponsor/owner needed additional time to comply with the City's design and site issues, for the firm commitment to be issued, and the project to be initally closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Luther Ridge, Oregon, OH, Project Number: 042–EE185/OH12–S041–021.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 14, 2007.

Reason Waived: The sponsor/owner needed additional time to finalize the initial closing documents and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Wade Chateau, Cleveland, OH, Project Number: 042–EE168/OH12–S041–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 14, 2007.

Reason Waived: The sponsor/owner needed additional time for the mixed finance project to meet the underwriting criteria of multiple funding sources and for the initial closing to take place.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Mountain Valley Haven III, Hayfork, CA, Project Number: 136–EE076/CA30–S041–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 14, 2007.

Reason Waived: The sponsor/owner needed additional time to achieve an initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Renaissance Court, Wilsonville, OR, Project Number: 126–HD039/OR16–Q041–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 14, 2007.

Reason Waived: Additional time was needed to meet the City's redevelopment requirements, for the firm commitment to be issued, and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Kleeman Village, Clinton, IL, Project Number: 072–HD144/IL06–Q041–008.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 16, 2007.

Reason Waived: The sponsor/owner needed additional time for initial closing to take place.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: VOA Sandusky, Sandusky, OH, Project Number: 042–HD110/OH12–Q021–008.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 18, 2007.

Reason Waived: The sponsor/owner needed additional time to finalize the initial closing and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Utuqqanaaqagvik Senior Housing, Nuiqsut, AK, Project Number: 176–EE033/AK06–S021–008.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 23, 2007.

Reason Waived: The sponsor/owner needed additional time to secure additional funding and submit the necessary updated firm commitment and initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Kaktovik Senior Housing, Kaktovik, AK Project Number: 176–EE032/AK06–S021–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 23, 2007.

Reason Waived: The sponsor/owner needed additional time to secure additional funding and submit the necessary updated firm commitment and initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Olgonikgum Uttuganaknich Senior Housing, Wainwright, AK, Project Number: 176–EE031/AK06–S021–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 23, 2007.

Reason Waived: The sponsor/owner needed additional time to secure additional funding and submit the necessary updated firm commitment and initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Aaniyak Senior Housing, Anaktuvuk Pass, AK

Project Number: 176–EE030/AK06–S021–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 23, 2007.

Reason Waived: The sponsor/owner needed additional time to secure additional funding and submit the necessary updated firm commitment and initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Tikigaqmiut Senior Housing, Point Hope, AK

Project Number: 176–EE030/AK06–S021–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 23, 2007.

Reason Waived: The sponsor/owner needed additional time to secure additional funding and submit the necessary updated firm commitment and initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Loudon VOANNE Senior Housing, Loudon, NH, Project Number: 024–EE076/NH36–S041–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 5, 2007.

Reason Waived: The sponsor/owner needed additional time to resolve issues involving the APPS system and approval of the 2530's clearance issues, for the firm commitment, and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Abilities at Eagles Nest, Lakeland, FL, Project Number: 067–HD096/FL29–Q041–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 8, 2007.

Reason Waived: The sponsor/owner needed additional time for initial closing to take place.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: B'nai B'rith Apartments of Deerfield Beach III, Deerfield Beach, FL, Project Number: 066–EE102/FL29–S041–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 18, 2007.

Reason Waived: The sponsor/owner needed additional time for a cross easement access issue to be resolved, the building permit to be issued, the insurance coverage to be re-negoitated, and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.205.

Project/Activity: Sartell Senior Housing, Sartell, MN, Project Number: 092–EE107/MN46–S051–001.

Nature of Requirement: Section 891.205 requires Section 202 project owners to have tax exemption status under Section 501(c)(3) or (c)(4) of the Internal Revenue Code.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 10, 2007.

Reason Waived: The required tax-exemption ruling from the Internal Revenue Service (IRS) was to be issued, but not in time for the scheduled initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.205.

Project/Activity: ASI Brookings, Brookings, SD, Project Number: 091–EE010/SD99–S051–002.

Nature of Requirement: Section 891.205 requires Section 202 project owners to have tax exemption status under Section 501(c)(3) or (c)(4) of the Internal Revenue Code.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 12, 2007.

Reason Waived: The required tax-exemption ruling from IRS was to be issued, but not in time for the scheduled initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.205.

Project/Activity: Sioux Falls 57 Good Samaritan Housing, Incorporated, Sioux Falls, SD, Project Number: 091–EE009/SD099–S051–001.

Nature of Requirement: Section 891.205 requires Section 202 project owners to have tax exemption status under Section 501(c)(3) or (c)(4) of the Internal Revenue Code.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 21, 2007.

Reason Waived: The required tax-exemption ruling from IRS was to be issued, but not in time for the scheduled initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.305.

Project/Activity: Rogers Supportive Housing, Rogers, MN, Project Number: 092–HD067?MN46–Q051–001.

Nature of Requirement: Section 891.305 requires Section 811 project owners to have tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 10, 2007.

Reason Waived: The required tax-exemption ruling from IRS was to be issued, but not in time for the scheduled initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 798–3000.

• Regulation: 24 CFR 891.305.

Project/Activity: Serviam Gardens, Bronx, NY, Project Number: 012–EE353/NY36–S061–009.

Nature of Requirement: Section 891.305 requires that the sole general partner of the mixed finance owner be a private nonprofit organization with a section 501(c)(3) or 501(c)(4) tax exemption (in the case of supportive housing for the elderly), or a nonprofit organization with a 501(c)(3) (in the case of supportive housing for persons with disabilities).

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 14, 2007.

Reason Waived: State law does not permit a not-for-profit corporation to act as a partner in a partnership. The permitted arrangement of having the sole general partner wholly owned and controlled by a nonprofit organization complied with the statutory requirements for the sole general partner in a mixed-finance transaction.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 798–3000.

• Regulation: 24 CFR 891.305.

Project/Activity: Presbyterian Senior Housing, Queens, NY, Project Number: 012–EE346/NY36–S061–002.

Nature of Requirement: Section 891.305 requires that the sole general partner of the mixed finance owner be a private nonprofit organization with a section 501(c)(3) or 501(c)(4) tax exemption (in the case of supportive housing for the elderly), or a nonprofit organization with a 501(c)(3) (in the case of supportive housing for persons with disabilities).

Granted By: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 14, 2007.

Reason Waived: State law does not permit a not-for-profit corporation to act as a partner in a partnership. The permitted arrangement of having the sole general partner wholly owned and controlled by a nonprofit organization complied with the statutory requirements for the sole general partner in a mixed-finance transaction.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 798–3000.

• Regulation: 24 CFR 891.305.

Project/Activity: Common Ground, Brooklyn, NY, Project Number: 012–EE338/NY36–S051–004.

Nature of Requirement: Section 891.305 requires that the sole general partner of the mixed finance owner be a private nonprofit organization with a section 501(c)(3) or 501(c)(4) tax exemption (in the case of supportive housing for the elderly), or a nonprofit organization with a 501(c)(3) (in the case of supportive housing for persons with disabilities).

Granted By: Brian D. Montgomery, Assistant Secretary for Housing–Federal Housing Commissioner.

Date Granted: June 14, 2007.

Reason Waived: State law does not permit a not-for-profit corporation to act as a partner in a partnership. The permitted arrangement of having the sole general partner wholly owned and controlled by a nonprofit organization complied with the statutory requirements for the sole general partner in a mixed-finance transaction.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 798–3000.

• Regulation: 24 CFR 891.305.

Project/Activity: Morris Heights/Mt. Hope Senior Housing, Bronx, NY, Project Number: 012–EE332/NY36–S041–002.

Nature of Requirement: Section 891.305 requires that the sole general partner of the mixed finance owner be a private nonprofit organization with a section 501(c)(3) or 501(c)(4) tax exemption (in the case of supportive housing for the elderly), or a nonprofit organization with a 501(c)(3) (in the case of supportive housing for persons with disabilities).

Granted By: Brian D. Montgomery, Assistant Secretary for Housing–Federal Housing Commissioner.

Date Granted: June 14, 2007.

Reason Waived: State law does not permit a not-for-profit corporation to act as a partner in a partnership. The permitted arrangement of having the sole general partner wholly owned and controlled by a nonprofit organization complied with the statutory requirements for the sole general partner in a mixed-finance transaction.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 798–3000.

• Regulation: 24 CFR 891.305.

Project/Activity: Surf Gardens, Brooklyn, NY, Project Number: 012–EE330/NY36–S031–003.

Nature of Requirement: Section 891.305 requires that the sole general partner of the mixed finance owner be a private nonprofit organization with a section 501(c)(3) or 501(c)(4) tax exemption (in the case of supportive housing for the elderly), or a nonprofit organization with a 501(c)(3) (in the case of supportive housing for persons with disabilities).

Granted By: Brian D. Montgomery, Assistant Secretary for Housing–Federal Housing Commissioner.

Date Granted: June 14, 2007.

Reason Waived: State law does not permit a not-for-profit corporation to act as a partner in a partnership. The permitted arrangement of having the sole general partner wholly owned and controlled by a nonprofit organization complied with the statutory requirements for the sole general partner in a mixed-finance transaction.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 798–3000.

• Regulation: 24 CFR 891.410(c).

Project/Activity: Strawberry, Arkansas (Strawberry Fields Apartments—FHA Project Number 082–EE140). The Fort Worth Multifamily Hub requested waiver of the very low-income limit to alleviate occupancy problems at the property and stabilize the project's current financial status.

Nature of Requirement: HUD regulations at 24 CFR 891 require occupancy to be limited to very low-income (VLI) elderly persons (i.e., households composed of one or more persons at least one of whom is 62 years of age at the time of initial occupancy). Regulations also require that an owner is to determine the eligibility in selecting tenants.

Granted By: Frank L. Davis, General Deputy Assistant Secretary for Housing–Deputy Federal Housing Commissioner.

Date Granted: June 18, 2007.

Reason Waived: The waiver was granted to permit admission of lower-income (income between 51 and 80 percent of median), elderly applicants when there are no very low-income elderly applicants to fill vacant units. The market analysis indicates that there is insufficient effective demand to fill the complex with very low-income elderly. The management agent continues to conduct extensive advertising and outreach programs, including marketing the property with the local housing authority. The property currently has 3 vacant units and no waiting list. Granting the waiver will allow the flexibility to offer units to individuals who meet the definition of lower income elderly and, thus, the owner will be able to increase occupancy levels and prevent foreclosure.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3730.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• Regulation: 24 CFR 5.801.

Project/Activity: Baltimore County Department of Social Services (MD033), Baltimore, MD.

Nature of Regulation: The regulation establishes certain reporting compliance dates, namely, the audited financial statements are required to be submitted no later than nine months after the housing agency's fiscal year end (FYE), in accordance with the Single Audit Act and Office of Management and Budget (OMB) Circular A–133 and 24 CFR 5.801.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: June 13, 2007.

Reason Waived: The Baltimore County Department of Social Services (HA) received a waiver of its audited financial submission due date of March 31, 2007, for FYE June 30, 2006. The Baltimore County Housing Office is the agent administering over 5,700 rent subsidies under their Housing Choice Voucher Program and the Section 8 Moderate Rehabilitation Program on behalf of the Baltimore County government. The HA has maintained its financial books in relation to the County's system of accounts, complying with reporting requirements to HUD's Financial Management Center. In coordination with Baltimore County's Finance Office, the HA has taken action to bring its accounts into compliance with the Uniform Financial Reporting Standards (UFRS). In the process, the staff encountered issues understanding the complexity of the system and the various requirements, as well as issues coordinating with the County's financial procedures. For these reasons, and to accurately and completely prepare their first submission, the HA was granted a 60-day waiver extension until May 31, 2007.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 5.801.

Project/Activity: Buffalo Municipal Housing Authority (NY449), Buffalo, NY.

Nature of Requirement: The regulation establishes certain reporting compliance dates, namely, the audited financial statements are required to be submitted no later than nine months after the housing agency's fiscal year end (FYE), in accordance with the Single Audit Act and Office of Management and Budget (OMB) Circular A–133 and 24 CFR 5.801.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: April 18, 2007.

Reason Waived: The Buffalo Municipal Housing Authority (HA), a Section 8-only entity, received a waiver of the audited financial reporting requirements due date for FYE June 30, 2006, because there was some confusion with the program needing a separate audit. In previous years, the financial information had been included in the HA's A–133 audit and was listed as a separate column on the financial data schedule submission. The role of the HA in this program has changed from being a ''pass through'' for the City of Buffalo to its actual administrator. The HA procured the services of an auditor, but the audit field work was not completed by the March 31, 2007, due date. Upon receipt of the completed audit, the HA will submit the information to the Financial Assessment Subsystem.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 5.801.

Project/Activity: Fulton County Housing Authority (PA072), McConnellsburg, PA.

Nature of Regulation: The regulation establishes certain reporting compliance dates, namely, the audited financial statements are required to be submitted no later than nine months after the housing agency's fiscal year end (FYE), in accordance with the Single Audit Act and Office of Management and Budget (OMB) Circular A–133 and 24 CFR 5.801.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: June 26, 2007.

Reason Waived: The Fulton County Housing Authority (HA) received a waiver of the due date to submit its audited financial data for FYE March 31, 2006. The HA's initial submission was rejected due to numerous issues resulting in a current status of failure to submit (FTS). The HA's entire staff has resigned, and four of the five board members have also resigned and have been replaced since the submission of the audited financial data in July 2006. Additionally, the auditor responsible for the audit has been unresponsive to the Board and the concerns raised by the local HUD Office. Consequently, HUD's Office of the Inspector General is investigating the possibility that the financial statements were fraudulent because of lack of confidence in the accuracy of the financial statements. The waiver provided additional time to August 30, 2007, for the HA to submit its audited financial data.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 5.801.

Project/Activity: County of Hawaii Office of Housing and Community Development (HI002), Hilo, HI.

Nature of Regulation: The regulation establishes certain reporting compliance dates, namely, the audited financial statements are required to be submitted no later than nine months after the housing agency's fiscal year end (FYE), in accordance with the Single Audit Act and Office of Management and Budget (OMB) Circular A–133 and 24 CFR 5.801.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: June 26, 2007.

Reason Waived: The County of Hawaii Office of Housing and Community Development (HA) received a waiver because the staff accountants and auditors have been unable to reconcile their beginning fund balance for FYEs June 30, 2005 and June 30, 2006. Additionally, in October 2006, the state of Hawaii was hit by a severe earthquake, resulting in significant destruction of property, including data and computer systems. The severity of loss required staff to divert its attention and energies to work with other government agencies, including the Federal Emergency Management Agency. The waiver provided additional time to submit the audited financial data by July 13, 2007, for FYs 2005 and 2006.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 5.801.

Project/Activity: Montana Department of Commerce (MT901), Helena, MN.

Nature of Requirement: The regulation establishes certain reporting compliance dates, namely, the audited financial statements are required to be submitted no later than nine months after the housing agency's fiscal year End (FYE), in accordance with the Single Audit Act and Office of Management and Budget (OMB) Circular A–133 and 24 CFR 5.801.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: June 12, 2007.

Reason Waived: The Montana Department of Commerce (HA), a Section 8 only entity, received a waiver of the audited financial submission due date for FYE June 30, 2006. The HA falls under the single audit requirements of the OMB A–133 and does not conduct a separate audit. The HA's audit is to be completed through the State of Montana Legislative Audit Division's audit covering a two-year period (July 1, 2005–June 30, 2007). Therefore, the HA expects the audit report to be completed around December 2007, but no later than the required due date of March 31, 2008. The waiver provided the additional time required to complete the audit.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 5.801.

Project/Activity: New Jersey Housing and Mortgage Finance Agency (NJ902), Trenton, NJ.

Nature of Regulation: The regulation establishes certain reporting compliance dates, namely, the audited financial statements are required to be submitted no later than nine months after the housing agency's fiscal year end (FYE), in accordance with the Single Audit Act and Office of Management and Budget (OMB) Circular A–133 and 24 CFR 5.801.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: April 18, 2007.

Reason Waived: The New Jersey Housing and Mortgage Finance Agency (HA0 received a waiver of the audited financial submission due date for FYE March 31, 2006. The Agency's Housing Choice Voucher Program's FYE is March 31, 2006, however, the FYE for HA, a non-profit organization, is June 30, 2006. The waiver was granted because the Primary Reporting Entity's (New Jersey Housing & Mortgage Finance Agency) FYE is different than the Housing Choice Voucher Program's FYE causing a conflict with the audited submission requirements.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 902.33.

Project/Activity: Housing Authority of Jefferson Parish (LA013), Marrero, LA.

Nature of Regulation: The regulation establishes certain reporting compliance dates; namely, the unaudited financial statements are required to be submitted within two months after the housing authority's FYE and the audited financial statements are required to be submitted no later than nine months after the housing authority's FYE, in accordance with the Single Audit Act and OMB Circular A–133, and 24 CFR 902.33.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: June 12, 2007.

Reason Waived: The Housing Authority of Jefferson Parish (HA) received a waiver of its unaudited financial submission extension due date for FYE September 30, 2006, because the fee accountant had a family crisis requiring her immediate attention for a few months. The waiver granted the HA additional time to May 31, 2007 to submit its unaudited financial submission.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 902.33.

Project/Activity: Mamou Housing Authority (LA031), Mamou, LA.

Nature of Regulation: The regulation establishes certain reporting compliance dates; namely, the audited financial statements are required to be submitted no later than nine months after the housing authority's FYE, in accordance with the Single Audit Act and OMB Circular A–133, and 24 CFR 902.33.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: June 11, 2007.

Reason Waived: The Mamou Housing Authority (HA) received a waiver of the due date to submit its audited financial submission for FYE June 30, 2006. The waiver granted the invalidation of the submission and provided the HA the opportunity to resubmit its audited financial submission.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 902.33.

Project/Activity: Kent County Housing Commission (MI198), Grand Rapids, MI.

Nature of Requirement: The regulation establishes certain reporting compliance dates; namely, the audited financial statements are required to be submitted no later than nine months after the housing authority's FYE, in accordance with the Single Audit Act and OMB Circular A–133, and 24 CFR 902.33.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: April 17, 2007.

Reason Waived: The Kent County Housing Commission (HA) received a waiver of the audited financial submission due date because it does not conduct a separate audit and because it is under the auspices of the County of Kent, and is subject to the single audit requirements of OMB Circular A–133. The HA's FYE is June 30, 2006, and the County of Kent's FYE is December 31, 2006. The A–133 audit report will be completed by late summer 2007. Upon receipt of the completed audit for the program for FYE June 30, 2006, the HA will submit the audited financial information.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 902.33.

Project/Activity: Conyers Housing Authority (GA184), Conyers, GA.

Nature of Requirement: The regulation establishes certain reporting compliance dates; namely, the audited financial statements are required to be submitted no later than nine months after the housing authority's FYE, in accordance with the Single Audit Act and OMB Circular A–133, and 24 CFR 902.33.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: April 17, 2007.

Reason Waived: The Conyers Housing Authority (HA) received a waiver of the audited financial submission due date of March 31, 2007, for FYE June 30, 2006, because the Board of Commissioners underwent a major transition with staff employees who were placed on investigatory suspension, pending the results of an investigation into financial irregularities. Based on results of a forensic audit, the Board decided against using the audit firm that had previously done the audit and retained the services of another auditor. The newly appointed auditor did not have sufficient time to properly provide a comprehensive annual audit to HUD by the March 31, 2007, deadline. The HA was granted a six-month extension to September 30, 2007, to submit its audited financial data.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 902.33.

Project/Activity: San Diego Housing Commission (CA063), San Diego, CA.

Nature of Requirement: The regulation establishes certain reporting compliance dates; namely, the audited financial statements are required to be submitted no later than nine months after the housing authority's FYE, in accordance with the Single Audit Act and OMB Circular A–133, and 24 CFR 902.33.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: April 18, 2007.

Reason Waived: The San Diego Housing Commission (HA) received a waiver of its audited financial submission due date of March 31, 2007, for FYE June 30, 2006. The HA is a component of the City of San Diego and its financial information is presented with the City's Comprehensive Annual Report. During February 2005, the HA was allowed to procure its own auditor due to irregularities noted in the City's Bond Disclosure documents. As a result, the audit is still in progress and the HA believes that the audit document will not be ready in time for submission to HUD.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 902.60(d) and 24 CFR 902.60(e).

Project/Activity: Ozark Housing Authority (AL073), Ozark, AL.

Nature of Requirement: The regulation establishes annual certification requirements for management operations and resident satisfaction surveys.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: June 7, 2007.

Reason Waived: The Ozark Housing Authority (HA) requested a waiver to have more resources to concentrate on organizational, procedural and software changes to convert to asset management. The HA received a waiver from compliance with the requirements of 24 CFR 902.60(d), to submit a management operations certification, and 24 CFR 902.60(e), from the resident satisfaction survey, for the fiscal years ending March 31, 2007 and March 31, 2008. HUD will carry over the Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System from the previous reporting period.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200, Washington, DC 20410–5000, telephone (202) 475–8632.

• Regulation: 24 CFR 902.60(d) and 24 CFR 902.60(e).

Project/Activity: Knoxville Housing Authority (TN111), Knoxville, TN.

Nature of Requirement: The regulation establishes annual certification requirements for management operations and resident satisfaction surveys.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: June 7, 2007.

Reason Waived: The Knoxville Housing Authority (HA) requested a waiver to have more resources to concentrate on organizational, procedural and software changes to convert to asset management. The HA received a waiver from compliance with the requirements of 24 CFR 902.60(d), to submit a management operations certification, and 24 CFR 902.60(e), from the resident satisfaction survey, for the fiscal year ending March 31, 2007. HUD will carry over the Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System from the previous reporting period.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200, Washington, DC 20410–5000, telephone (202) 475–8632.

• Regulation: 24 CFR 902.60(d) and 24 CFR 902.60(e).

Project/Activity: Housing Authority of the City of Harlingen (TX065), Harlingen, TX.

Nature of Requirement: The regulation establishes annual certification requirements for management operations and resident satisfaction surveys.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: June 11, 2007.

Reason Waived: The Housing Authority of the City of Harlingen (HA) requested a waiver to have more resources to concentrate on organizational, procedural and software changes to convert to asset management. The HA received a waiver from compliance with the requirements of 24 CFR 902.60(d), to submit a management operations certification, and 24 CFR 902.60(e), from the resident satisfaction survey, for the fiscal year ending March 31, 2007. HUD will carry over the Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System from the previous reporting period.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200, Washington, DC 20410–5000, telephone (202) 475–8632.

• Regulation: 24 CFR 902.60(d) and 24 CFR 902.60(e).

Project/Activity: West Palm Beach Housing Authority (FL009), West Palm Beach, FL.

Nature of Requirement: The regulation establishes annual certification requirements for management operations and resident satisfaction surveys.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: June 26, 2007.

Reason Waived: The West Palm Beach Housing Authority (HA) requested a waiver to have more resources to concentrate on organizational, procedural and software changes to convert to asset management. The HA received a waiver from compliance with the requirements of 24 CFR 902.60(d), to submit a management operations certification, and 24 CFR 902.60(e), from the resident satisfaction survey, for the fiscal year ending March 31, 2007. HUD will carry over the Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System from the previous reporting period.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200, Washington, DC 20410–5000, telephone (202) 475–8632.

• Regulation: 24 CFR 941.606(n)(l)(ii)(B).

Project/Activity: Daytona Beach Housing Authority, Daytona Beach, Florida; Pine Haven and the Bethune Village/Halifax Park HOPE VI Project.

Nature of Requirement: The provision requires that if the partner and/or owner entity (or any other entity with an identity of interest with such parties) wants to serve as a general contractor for the project or development, it may award itself the construction contract only if it can demonstrate to HUD's satisfaction that its bid is the lowest submitted in response to a public request for bids.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: April 18, 2007.

Reason Waived: The Daytona Beach Housing Authority (DBHA) selected Picerne Construction Corporation as the general contractor for Pine Haven, an on-site component of the Bethune Village/Halifax Park HOPE VI project. Picerne Affordable Development, LLC (Picerne) is the master developer for the Bethune Village/Halifax Park HOPE VI site. Picerne is also the component developer for the Pine Haven phase of the HOPE VI project. Picerne Construction Corporation will use a competitive process to engage the subcontractors needed to construct the project. Picerne Construction Corporation has served as the general contractor for all Picerne projects. The basis for the waiver is that the DBHA is on an accelerated schedule from both HUD and the State Housing Finance Agency to complete its HOPE VI project. Picerne Construction Corporation's involvement is essential to ensuring timely development, within budget. As a requirement, DBHA submitted an independent cost estimate by Benchmark Estimating Services, Inc. for Pine Haven, which estimates totaled $15,429,734. DBHA also submitted the executed construction contract between Picerne Construction Corporation and Pine Haven Housing, Ltd., LLLP, the ownership entity for Pine Haven, which includes Picerne, which totaled $14, 865,035 for construction of Pine Haven. As Picerne Construction Corporation's cost was below that of the independent cost estimate, HUD's condition was satisfied.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410–5000, telephone (202) 402–4181.

• Regulation: 24 CFR 941.606(n)(l)(ii)(B).

Project/Activity: Municipal Housing Authority of the City of Utica, Washington; Washington Courts, Phase III (Rutger Manor).

Nature of Requirement: The provision requires that if the partner and/or owner entity (or any other entity with an identity of interest with such parties) wants to serve as a general contractor for the project or development, it may award itself the construction contract only if it can demonstrate to HUD's satisfaction that its bid is the lowest submitted in response to a public request for bids.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: June 5, 2007.

Reason Waived: The Municipal Housing Authority of the City of Utica (UMHA) procured Housing Visions Unlimited, Inc. (Developer) as the master developer for its Washington Courts HOPE VI revitalization efforts, including Phase III, Rutger Manor. The waiver enabled Housing Visions Construction Company, Inc. (Contractor), which is owned by the same individuals as the Developer, to serve as the general contractor for Phase III. The Contractor did not bid to become the general contractor, as specified by this provision, but UMHA has demonstrated that the construction costs are reasonable and are within applicable HUD cost limits. The basis for the waiver was determined by the experience of the Developer and Contractor and their record of successful project completions in the Central New York area. Scattered sites, such as this one, are frequently difficult to manage. Close coordination between the Developer and Contractor will be required in order to complete this scattered-site project on time and within budget. This affiliated relationship will provide a greater incentive to overcome adverse circumstances that are frequently encountered during the construction process. To ensure that this project's construction costs were reasonable, UMHA procured the services of a third-party construction cost-estimating firm. UMHA chose Baer and Associates (Baer) to conduct an independent third-party construction cost estimate. Baer's estimate totaled $5,903,777. The project's construction contract and schedule of values showed a construction cost of $5,707,588, which is less than Baer's estimate. As project construction cost was below that of the independent cost estimate, HUD's condition was satisfied.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, Room 4130, DC 20410–5000, telephone (202) 402–4181.

- Regulation: 24 CFR 941.610(a)(1)–(a)(7).

Project/Activity: Tacoma Housing Authority (THA), Tacoma, Washington; Closing of Salishan Four.

Nature of Requirement: The provision requires HUD review and approval of certain legal documents relating to mixed-finance development before a closing can occur and funds can be released. In lieu of HUD's review, and before funds can be released, the public housing authority (PHA) must submit documentation which certifies, in form specified by HUD, to the accuracy and authenticity of the legal documents detailed in 24 CFR 941.610(a)(1)–(a)(7). Granting a waiver or HUD's review and allowing the PHA to certify to the validity of certain legal documents will streamline the review process and expedite closing and public production.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: June 4, 2007.

Reason Waived: The basis for the waiver was because THA is a high performing housing authority with extensive development and mixed-finance experience. Salishan Four is the fourth rental phase in THA's overall HOPE VI development, which includes six rental phases and three homeownership phases. The Salishan Four proposal includes 45 tax credit/public housing replacement units and 45 Section 8 project-based units. Salishan Four is a near duplicate of Salishan One, Two and Three, which were exhaustively reviewed and approved by HUD. These justifications determine that good cause existed for granting the waiver.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410–5000, telephone (202) 402–4181.

- Regulation: 24 CFR 941.610(a)(1)–(a)(7).

Project/Activity: Housing Authority of the City of Milwaukee (HACM), MN; Closing of Convent Hill.

Nature of Requirement: The provision requires HUD review and approval of certain legal documents relating to mixed-finance development before a closing can occur and funds can be released. In lieu of HUD's review, and before funds can be released, the Public Housing Authority (PHA) must submit documentation which certifies, in form specified by HUD, to the accuracy and authenticity of the legal documents detailed in 24 CFR 941.610(a)(1)–(a)(7). Granting a waiver or HUD's review and allowing the PHA to certify to the validity of certain legal documents will streamline the review process and expedite closing and public housing production.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: June 18, 2007.

Reason Waived: The basis for the waiver was because HACM is a high performing housing authority with extensive development and mixed-finance experience. The other development partners in the project are also experienced in public housing mixed-finance development. Convent Hill is a mixed-financed transaction, and as such includes low-income housing tax credits and Federal Home Loan Bank Affordable Housing Program funds. Both of these organizations have extensive review processes and financial control mechanisms. HUD review would repeat and duplicate the activities which these processes are already performing. Convent Hill is a near duplicate of previous mixed-finance projects undertaken by HACM, including Cherry Hill and Hyland Park, both of which underwent full evidentiary document review and approval by HUD. These projects have the same ownership structure, participating parties, tax credit investor, and financial structure as Convent Hill. These justifications determine that good cause existed for granting the waiver.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, 451 Seventh Street, SW., Room 4130, Washington, DC 20410–5000, telephone (202) 402–4181.

- Regulation: 24 CFR 982.305(c)(1) and (4).

Project/Activity: Kelso Housing Authority (KHA), Kelso, WA. The KHA requested a waiver regarding execution of housing assistance payments (HAP) contracts because of funding issues related to Tartan House, a preservation prepayment project.

Nature of Requirement: Section 982.305(c)(1) and (4) state that the Housing Choice Voucher (HCV) program HAP contract must be executed no later than 60 days from the beginning of the lease term and any contract executed after the 60 day period is void and the public housing agency (PHA) may not pay any HAP to the owner.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: May 16, 2007.

Reason Waived: HCV funding was originally allocated to the KHA, but coded improperly as a preservation prepayment. The reallocation of funds under the correct code caused a delay in the availability of funds to the KHA. Therefore, the KHA was unable to execute HAP contracts in a timely manner related to the approval of the units.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; (202) 708–0477.

- Regulation: 24 CFR 982.306(d).

Project/Activity: Northwest Minnesota Multi-County Housing and Redevelopment Authority (MMCHRA), Norman County, MN. MMCHRA requested a waiver regarding renting to relatives so that an eight-member family, with no disabled members, could rent from the head of household's mother.

Nature of Requirement: Section 982.503(d) states that the public housing agency (PHA) must not approve a unit if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the PHA determines that approving the unit would provide a reasonable accommodation for a family member who is a person with disabilities.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: May 18, 2007.

Reason Waived: The MMCHRA maintained that the market area was tight and the family was unable to find other adequate housing. Without a waiver, this large family would have been unable to utilize its voucher.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; (202) 708–0477.

- Regulation: 24 CFR 982.505(c)(3).

Project/Activity: Westbrook Housing Authority (WHA), Westbrook, ME. The WHA requested a waiver of payment standard (PS) requirements to permit it to implement reduced PSs earlier than required to avoid termination of housing assistance payments (HAP) contracts during calendar year 2007 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: April 13, 2007.

Reason Waived: The waiver was granted because this cost-saving measure would enable the WHA to both manage its Housing

Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; (202) 708–0477.

• Regulation: 24 CFR 982.505(c)(3).

Project/Activity: Dauphin County Housing Authority (DCHA), Dauphin County, PA. The DCHA requested a waiver of payment standard (PS) requirements to permit it to implement reduced PSs earlier than required to avoid termination of housing assistance payments (HAP) contracts during calendar year 2007 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: April 20, 2007.

Reason Waived: The waiver was granted because this cost-saving measure would enable the DCHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; (202) 708–0477.

• Regulation: 24 CFR 982.505(c)(3).

Project/Activity: Glens Falls Housing Authority (GFHA), Glens Falls, NY. The GFHA requested a waiver of payment standard (PS) requirements to permit it to implement reduced PSs earlier than required to avoid termination of housing assistance payments (HAP) contracts during calendar year 2007 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: May 18, 2007.

Reason Waived: The waiver was granted because this cost-saving measure would enable the GFHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; (202) 708–0477.

• Regulation: 24 CFR 982.505(c)(3).

Project/Activity: Housing Authority of Thurston County (HATC), Thurston County, WA. The HATC requested a waiver of payment standard (PS) requirements to permit it to implement reduced PSs earlier than required to avoid termination of housing assistance payments (HAP) contracts during calendar year 2007 due to insufficient funding.

Nature of Requirement. Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: May 25, 2007.

Reason Waived: The waiver was granted because this cost-saving measure would enable the HATC to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh SW., Room 4210, Washington, DC 20410; (202) 708–0477.

• Regulation: 24 CFR 982.505(d).

Project/Activity: Housing Authority of the City of Las Cruces (HACLC), Las Cruces, NM. The HACLC requested a waiver regarding exception payment standards so that it could provide a reasonable accommodation to a person with disabilities.

Nature of Requirement: Section 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Orlando J. Cabrera, Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 7, 2007.

Reason Waived: The applicant, who is a person with disabilities, required a wheelchair-accessible unit. The family conducted an extensive search before locating the accessible unit in which the applicant wished to remain. To provide a reasonable accommodation so that the newly admitted participant would pay no more than 40 percent of adjusted income toward the family share, the HACLC was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; (202) 708–0477.

• Regulation: 24 CFR 982.505(d).

Project/Activity: Housing Authority of Snohomish County (HASC) Snohomish County, WA. The HASC requested a waiver regarding exception payment standards so that it could provide a reasonable accommodation to a person with disabilities.

Nature of Requirement: Section 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: June 13, 2007.

Reason Waived: The applicant, who is a person with disabilities, owns a manufactured home, which had been modified to meet the person's physical needs and is accessible to health care and support systems. To provide a reasonable accommodation so that the newly admitted participant would pay no more than 40 percent of adjusted income toward the family share, the HASC was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; (202) 708–0477.

• Regulation: 24 CFR 983.51(b).

Project/Activity: Mississippi Regional Housing Authority VIII (MSRHA VIII), Gulfport, MS. The MSRHA VIII requested a waiver of competitive selection under the project-based voucher (PBV) program so that it could attach PBVs to up to seven public housing developments that have been, or will be, disposed of to a non-profit subsidiary of the agency.

Nature of Requirement: Section 983.51(b) requires either competitive selection of owner proposals or non-competitive selection of proposals under another federal, state or local government housing assistance program that was selected within the past three years.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: May 2, 2007.

Reason Waived: The waiver was granted because attaching PBV to these units will ensure the maintenance of long-term affordable housing in the relief and recovery efforts in the wake of Hurricane Katrina.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; (202) 708–0477.

• Regulation: 24 CFR 983.51(b) through (d).

Project/Activity: St. Louis Housing Authority (SLHA), St. Louis, MO. The SLHA requested a waiver of competitive selection under the project-based voucher (PBV) program so that it could attach PBVs to units at Carr Square Village, a HOPE I development partially owned by the Carr Square Tenant Management Corporation (CSTMC).

Nature of Requirement: Section 983.51(b) through (d) requires either competitive selection of owner proposals or non-competitive selection of proposals under another federal, state or local government housing assistance program that was selected within the past three years, along with public notice of request for proposals and PHA notice of owner selection.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: June 21, 2007.

Reason Waived: The waiver was granted because attaching PBV to these units is necessary as part of the CSTMS's overall restructuring plan since PBV assistance is required to make the development financially viable and to facilitate the closing of the HOPE I grant.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; (202) 708–0477.

• Regulation: 24 CFR 983.51(b), (c), (d) and (e).

Project/Activity: Mississippi Regional Housing Authority VIII, Gulfport, MS; Biloxi Housing Authority, Biloxi, MS; Bay St. Louis/Waveland Housing Authority, Bay St. Louis and Waveland, MS. These PHAs requested a waiver of competitive selection under the project-based voucher (PBV) program so that they could attach PBVs to their PHA-owned units to develop additional affordable housing while leveraging Community Development Block Grant funds allocated by Governor Barbour.

Nature of Requirement: Section 983.51(b), (c), (d) and (e) requires either competitive selection of owner proposals or non-competitive selection of proposals under another federal, state or local government housing assistance program that was selected within the past three years.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: June 11, 2007.

Reason Waived: The waiver was granted because attaching PBV to these units will ensure the maintenance of long-term affordable housing in the relief and recovery efforts in the wake of Hurricane Katrina.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; (202) 708–0477.

• Regulation: 24 CFR 983.304(c)(2).

Project/Activity: Somerville Housing Authority (SHA), Somerville, MA. The SHA requested a waiver of this regulation so that it could charge higher rents than allowed for low-income housing tax credit (LIHTC) units under the project-based voucher (PBV) program at Capen Court since, without the requested waiver, there would be insufficient funding to finance this project.

Nature of Requirement: Section 983.304(c)(2) states that the rent to an owner for a PBV unit may not exceed the LIHTC rent as determined in accordance with the requirements of that federal program.

Granted By: Orlando Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: April 20, 2007.

Reason Waived: This regulation was waived since the SHA will preserve these units as affordable housing for a period beyond the 10 year maximum initial term of the PBV housing assistance payments contract and a regulatory agreement with the Massachusetts Department of Housing and Community Development will likely restrict the property to low-income occupancy and affordability for at least 30 years.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; (202) 708–0477.

• Regulation: 24 CFR 990.185(a).

Project/Activity: The Troy Housing Authority (THA), Troy, New York. The THA is contracting to Energy Performance through a term longer than the stated 12-year maximum.

Nature of Requirement: On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (Pub. L. 109–58). Subtitle D of Public Law 109–58 addresses public housing and amends Section 9(e)(2)(C) of the United States Housing Act of 1937 by adding a new paragraph (iii) which states ''Term of contract:—The total term of a contract shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating systems replacements, wall insulation, site-based generation, advanced energy savings technologies, including renewable energy generation, and other such retrofits.'' However, HUD's current regulation 24 CFR 990.185(a) states that the contract period shall not exceed 12 years.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: April 12, 2007.

Reason Waived: The THA is undertaking a self-developed energy project, acting as an Energy Services company, and has hired a qualified third party consultant to provide energy management expertise. THA anticipates that recommendations arising from its energy audit will incorporate a selection of energy conservation measures whose life cycle expectations and costs will exceed the 12-year regulatory limitation in 24 CFR 990.185(a). The THA anticipates that the selection of retrofits will be capable of generating adequate savings to amortize the resulting debt within the approved period of the energy performance contract. Based upon the anticipated savings and benefits to THA and its residents, this waiver grants the THA the 12-year payback period to allow up to a 20-year payback period, contingent on HUD's provisions to THA.

HUD's provisions include additional information and technical activity requirements unique to the characteristics of the project and the PHA. The purpose of the provisions is to ensure success, minimizing risk to projected savings (used to amortize the loan) and to HUD. The PHA must comply with all of HUD's provisions for the waiver to be effective. These provisions include, but not limited to information requirements, necessary for the local field office to monitor savings over the 20 year life of the loan and procurement requirement to ensure fair and open competition. The HUD provisions are also a direct response to the Office of Management and Budget concern related to the higher risk levels associated with a 20-year versus the previous limit of 12 years. HUD, through its provisions, provides an individual assessment and requirements of each project and waiver requesting an extension to 20-contract years to minimize risk and ensure that approval of the waiver is in the best interest of the PHA, HUD and the public.

Contact: Nicole Faison, Director, Office of Public Housing Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4238, Washington, DC 20410–5000, telephone (202) 708–0744.

• Regulation: 24 CFR 990.185(a).

Project/Activity: Ithaca Housing Authority (IHA), Ithaca, New York. The IHA is contracting to Energy Performance through a term longer than the stated 12-year maximum.

Nature of Requirement: On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (Pub. L. 109–58). Subtitle D of Public Law 109–58 addresses public housing and amends Section 9(e)(2)(C) of the United States Housing Act of 1937 by adding a new paragraph (iii) which states ''Term of contract:—The total term of a contract shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating systems replacements, wall insulation, site-based generation, advanced energy savings technologies, including renewable energy generation, and other such retrofits.'' However, HUD's current regulation 24 CFR 990.185(a) states that the contract period shall not exceed 12 years.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: May 14, 2007.

Reason Waived: IHA is undertaking a self-developed energy project, acting as an Energy Services company, and has hired a qualified third party consultant to provide energy management expertise. IHA anticipates that recommendations arising from its energy audit will incorporate a selection of energy conservation measures whose life cycle expectations and cost will exceed the 12-year regulatory limit regulatory limitation in 24 CFR 990.185(a). IHA anticipates that the selection of energy conservation of retrofits will be capable for generating adequate savings to amortize the resulting debt within the approved period of the energy performance contract. Based upon the anticipated savings and benefits to IHA and its residents, the waiver granted the IHA the 12-year payback period to allow up to a 20-year payback period, contingent on HUD's provisions to IHA.

HUD's provisions include additional information and technical activity requirements unique to the characteristics of the project and the PHA. The purpose of the provisions is to ensure success, minimizing risk to projected savings (used to amortize the loan) and to HUD. The PHA must comply with all of HUD's provisions for the waiver to be effective. These provisions may include, but not limited to information requirements, necessary for the local field office to monitor savings over the 20 year life of the loan and procurement requirement to ensure fair and open competition. The HUD provisions are also a direct response to the Office of Management and Budget concern related to the higher risk levels associated with a 20-year versus the previous limit of 12 years. HUD, through its provisions, provides an individual assessment and requirements of each project and waiver requesting an extension to 20-contract years to minimize risk and ensure that approval of the waiver is in the best interest of the PHA, HUD and the public.

Contact: Nicole Faison, Director, Office of Public Housing Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4238, Washington, DC 20410–5000, telephone (202) 708–0744.

- Regulation: 24 CFR 990.185(a).

Project/Activity: Providence Housing Authority (PHA), Providence, Rhode Island. The PHA is contracting to Energy Performance through a term longer than the stated 12-year maximum.

Nature of Requirement: On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (Pub. L. 109–58). Subtitle D of Public Law 109–58 addresses public housing and amends Section 9(e)(2)(C) of the United States Housing Act of 1937 by adding a new paragraph (iii) which states ''Term of contract:—The total term of a contract shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating systems replacements, wall insulation, site-based generation, advanced energy savings technologies, including renewable energy generation, and other such retrofits.'' However, HUD's current regulation 24 CFR 990.185(a) states that the contract period shall not exceed 12 years.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: May 18, 2007.

Reason Waived: The PHA is undertaking a self-developed energy project, acting as an Energy Services Company, and has hired a third party consultant to provide energy management expertise. PHA anticipates that recommendations arising from its energy audit will incorporate a selection of energy conservation measures whose life cycle expectations and cost will exceed the 12-year regulatory limitation in 24 CFR 990.185(a). PHA anticipates that the selection of retrofits will be capable of generating adequate savings to amortize the resulting debt within the approved period of the energy performance contract. Based upon the anticipated savings and benefits to PHA and its residents, the waiver granted the PHA the 12-year payback period to allow up to a 20-year payback period, contingent on HUD's provisions to PHA.

HUD's provisions include additional information and technical activity requirements unique to the characteristics of the project and the PHA. The purpose of the provisions is to ensure success, minimizing risk to projected savings (used to amortize the loan) and to HUD. The PHA must comply with all of HUD's provisions for the waiver to be effective. These provisions may include, but not limited to information requirements, necessary for the local field office to monitor savings over the 20 year life of the loan and procurement requirement to ensure fair and open competition. The HUD provisions are also a direct response to the Office of Management and Budget concern related to the higher risk levels associated with a 20-year versus the previous limit of 12 years. HUD, through its provisions, provides an individual assessment and requirements of each project and waiver requesting an extension to 20-contract years to minimize risk and ensure that approval of the waiver is in the best interest of the PHA, HUD and the public.

Contact: Nicole Faison, Director, Office of Public Housing Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4238, Washington, DC 20410–5000, telephone (202) 708–0744.

- Regulation: 24 CFR 990.185(a).

Project/Activity: The Schenectady Housing Authority (SHA), Schenectady, New York. The SHA is contracting to Energy Performance through a term longer than the stated 12-year maximum.

Nature of Requirement: On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (Pub. L. 109–58). Subtitle D of Public Law 109–58 addresses public housing and amends Section 9(e)(2)(C) of the United States Housing Act of 1937 by adding a new paragraph (iii) which states ''Term of contract—The total term of a contract shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating systems replacements, wall insulation, site-based generation, advanced energy savings technologies, including renewable energy generation, and other such retrofits.'' However, HUD's current regulation 24 CFR 990.185(a) states that the contract period shall not exceed 12 years.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: June 28, 2007.

Reason Waived: SHA is undertaking a self-developed energy project, acting as an Energy Services Company, and has hired a qualified third party consultant to provide energy management expertise. SHA anticipates that recommendations arising from its energy audit will incorporate a selection of energy conservation measures whose life cycle expectations and cost will exceed the 12-year regulatory limit regulatory limitation in 24 CFR 990.185(a). SHA anticipates that the selection of energy conservation of retrofits will be capable of generating adequate savings to amortize the resulting debt within the approved period for the energy performance contract. Based upon the anticipated savings and benefits to SHA and its residents, the waiver granted the SHA the 12-year payback period to allow up to a 20-year payback period, contingent on HUD's provisions to SHA.

HUD's provisions include additional information and technical activity requirements unique to the characteristics of the project and the PHA. The purpose of the provisions is to ensure success, minimizing risk to projected savings (used to amortize the loan) and to HUD. The PHA must comply with all of HUD's provisions for the waiver to be effective. These provisions may include, but not limited to information requirements, necessary for the local field office to monitor savings over the 20 year life of the loan and procurement requirement to ensure fair and open competition. The HUD provisions are also a direct response to the Office of Management and Budget concern related to the higher risk levels associated with a 20-year versus the previous limit of 12 years. HUD, through its provisions, provides an individual assessment and requirements of each project and waiver requesting an extension to 20-contract years to minimize risk and ensure that approval of the waiver is in the best interest of the PHA, HUD and the public.

Contact: Nicole Faison, Director, Office of Public Housing Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4238, Washington, DC 20410–5000, telephone (202) 708–0744.

[FR Doc. E7–18120 Filed 9–17–07; 8:45 am]

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Federal Register

Tuesday,
September 18, 2007

Part III

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Parts 93, 94, 95, and 96

Bovine Spongiform Encephalopathy; Minimal-Risk Regions; Importation of Live Bovines and Products Derived From Bovines; Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93, 94, 95, and 96

[Docket No. APHIS–2006–0041]

RIN 0579–AC01

Bovine Spongiform Encephalopathy; Minimal-Risk Regions; Importation of Live Bovines and Products Derived From Bovines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations regarding the importation of animals and animal products to establish conditions for the importation of the following commodities from regions that present a minimal risk of introducing bovine spongiform encephalopathy into the United States: Live bovines for any use born on or after a date determined by the Animal and Plant Health Inspection Service to be the date of effective enforcement of a ruminant-to-ruminant feed ban in the region of export; blood and blood products derived from bovines; and casings and part of the small intestine derived from bovines. We are making these amendments after conducting a risk assessment and comprehensive evaluation of the issues and concluding that such bovines and bovine products can be safely imported under the conditions described in this rule. This document also removes the delay in applicability of certain provisions of a final rule published in January 2005.

DATES: *Effective Date:* November 19, 2007.

FOR FURTHER INFORMATION CONTACT: For information regarding ruminant products, contact Dr. Karen James-Preston, Director, Technical Trade Services, Animal Products, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

For information concerning live ruminants, contact Dr. Lee Ann Thomas, Director, Technical Trade Services, Animals, Organisms and Vectors, and Select Agents, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4935.

For other information concerning this proposed rule, contact Dr. Lisa Ferguson, Senior Staff Veterinarian, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–6954.

SUPPLEMENTARY INFORMATION:

Purpose

This document makes final a proposed rule that the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA or the Department) published in the **Federal Register** on January 9, 2007 (72 FR 1101–1129, Docket No. APHIS–2006–0041). Additionally, it removes the delay of applicability of certain provisions of a final rule APHIS published in January 2005. The removal of delay is discussed below under the heading ''Removal of Partial Delay of Applicability of Provisions of January 2005 Final Rule.''

In our January 2007 proposed rule, we proposed to amend the regulations in 9 CFR parts 93, 94, 95, and 96 to establish conditions for the importation of the following commodities from regions that present a minimal risk of introducing bovine spongiform encephalopathy (BSE) into the United States: Live bovines for any use born on or after a date determined by APHIS to be the date of effective enforcement of a ruminant-to-ruminant feed ban in the region of export; blood and blood products derived from bovines; and casings and part of the small intestine derived from bovines.

In this document, we respond to public comments received on the proposed rule and its underlying risk assessment and other supporting analyses. Additionally, we discuss below the history of APHIS rulemaking related to BSE minimal-risk regions.

Background

APHIS regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases. The regulations in 9 CFR parts 93, 94, 95, and 96 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including BSE, a chronic degenerative disease affecting the central nervous system of cattle.

With some exceptions, APHIS' regulations prohibit or restrict the importation of live ruminants and certain ruminant products and byproducts from the following three categories of regions with regard to BSE: (1) Those regions in which BSE is known to exist (listed in § 94.18(a)(1) of the regulations); (2) those regions that present an undue risk of introducing BSE into the United States because their import requirements are less restrictive than those that would be acceptable for import into the United States and/or because the regions have inadequate surveillance (listed in § 94.18(a)(2) of the regulations); and (3) those regions that present a minimal risk of introducing BSE into the United States via live ruminants and ruminant products and byproducts (listed in § 94.18(a)(3) of the regulations).

Chronology of Federal Register Publications Regarding BSE Minimal-Risk Regions

We added the § 94.18(a)(3) category (BSE minimal-risk regions) to the regulations in a final rule published in the **Federal Register** on January 4, 2005 (70 FR 459–553, Docket No. 03–080–3). In the final rule, we specified which commodities may be imported from BSE minimal-risk regions and under what conditions, and recognized Canada as a BSE minimal-risk region. (At this time, Canada is the only recognized BSE minimal-risk region.)

The January 2005 final rule was based on a proposed rule we published in the **Federal Register** on November 4, 2003 (68 FR 62386–62405, Docket No. 03–080–1). On December 25, 2003, less than 2 weeks before the close of the comment period for our proposed rule, a case of BSE in a dairy cow of Canadian origin in Washington State was verified by an international reference laboratory.

In response to comments from the public requesting an extension of the comment period and in order to give the public an additional opportunity to comment on the proposed rule in light of this development, on March 8, 2004, we published a document in the **Federal Register** (69 FR 10633–10636, Docket No. 03–080–2) reopening the comment period.

On January 4, 2005, along with the final rule, we published in the **Federal Register** a notice (70 FR 554, Docket No. 03–080–4) announcing the availability of, and requesting comments on, a final environmental assessment (EA) regarding the potential impact on the quality of the human environment due to the importation of ruminants and ruminant products and byproducts from Canada under the conditions specified in the final rule. On January 21, 2005, we published in the **Federal Register** a notice (70 FR 3183–3184, Docket No. 03–080–5) announcing the availability of a corrected version of the EA for public review and comment. On April 8, 2005, we published in the **Federal Register** a finding (70 FR 18252–18262, Docket No. 03–080–7) that the provisions of the final rule would not have a significant impact on the quality of the human environment.

On March 11, 2005, we published a document in the **Federal Register** that gave notice that the Secretary of Agriculture was delaying until further notice the implementation of certain provisions of the final rule with regard to certain commodities (70 FR 12112–12113, Docket No. 03–080–6).

On November 28, 2005, we published in the **Federal Register** an interim rule (70 FR 71213–71218, Docket No. 03–080–8) that amended certain provisions established by the January 2005 final rule. The interim rule broadened the list of who is authorized to break seals on conveyances and allows transloading under supervision of products transiting the United States.

On March 14, 2006, we published in the **Federal Register** a technical amendment (71 FR 12994–12998, Docket No. 03–080–9) that clarified our intent with regard to certain provisions in the January 2005 final rule and corrected several inconsistencies within the rule.

On August 9, 2006, we published in the **Federal Register** a proposed rule (71 FR 45439–45444, Docket No. APHIS–2006–0026) that proposed to amend the provisions established by the January 2005 final rule by removing several restrictions regarding the identification of animals and the processing of ruminant materials from BSE minimal-risk regions, and by relieving BSE-based restrictions on hide-derived gelatin from BSE minimal-risk regions. We solicited comments concerning our proposal for 60 days ending October 10, 2006. On November 9, 2006, we published a document in the **Federal Register** (71 FR 65758–65759, Docket No. APHIS–2006–0026) reopening and extended the comment period until November 24, 2006. We received a total of 10 comments by that date. We are considering the issues raised by the commenters and will address them in a separate rulemaking document.

Scope of the January 2005 Final Rule

The regulations established by the January 2005 final rule and subsequent amendments have allowed the importation from BSE minimal-risk regions of live bovines that are under 30 months of age when imported and when slaughtered and that have been subject to a ruminant feed ban equivalent to that in place in the United States.

We did not attempt, for that rulemaking, to assess the BSE risk associated with the importation of live bovines 30 months of age or older from a BSE minimal-risk region. Our March 8, 2004, document that reopened the comment period on the November 2003 proposed rule stated that APHIS was evaluating the appropriate approach with regard to the importation of live animals 30 months of age or older from BSE minimal-risk regions, and would address that issue in a supplemental rulemaking proposal in the **Federal Register**. The provisions in our January 9, 2007, proposed rule regarding live bovines were the result of that evaluation.

The regulations established by the January 2005 final rule also provided for the importation of the following commodities derived from bovines of any age: (1) Meat, meat food products, and meat byproducts; (2) whole or half carcasses; (3) offal; (4) tallow composed of less than 0.15 percent insoluble impurities that are not otherwise eligible for importation under § 95.4(a)(1)(i) of the regulations; and (5) gelatin derived from bones of bovines that is not otherwise eligible for importation under § 94.18(c) of the regulations.

The January 2005 final rule and subsequent amendments did not change the regulations concerning the importation of blood and blood products from regions listed in § 94.18(a); the requirements for the importation of blood and blood products from BSE minimal-risk regions remain the same as the requirements for importation of blood and blood products from other regions listed in § 94.18(a)—only serum and serum albumin have been eligible for importation. The January 2005 final rule also did not change the regulations concerning the importation of bovine casings (defined as intestines, stomachs, esophagi, and urinary bladders) from regions listed in § 94.18(a); the requirements for the importation of bovine casings from BSE minimal-risk regions remain the same as the requirements for importation of bovine casings from other regions listed in § 94.18(a)—only bovine stomachs are eligible for importation.

The January 2005 final rule and subsequent amendments allowed trade to resume in many, but not all, of the commodities that had been prohibited importation from Canada following detection of a BSE-infected cow in Canada in May 2003. Following our January 2005 final rule, we continued to consider the BSE risk associated with older bovines and other bovine products from BSE minimal-risk regions—and Canada in particular—including bovine blood and blood products, bovine small intestine other than the distal ileum, and bovine casings, and included provisions in our January 2007 proposed rule for the importation of those commodities.[1]

Peer Review of APHIS' Risk Assessment

As part of this rulemaking, APHIS conducted an assessment that evaluated the animal health risk to the United States of BSE—i.e., the likelihood of establishment and the potential impacts of cases that may occur even without establishment—as a result of importing the bovine commodities considered in this rule (APHIS 2006b). Our assessment concluded that, over the 20 years of the analysis, the BSE risk to the United States is negligible. We made the risk assessment available for public review and comment at the time the proposed rule was published.

In addition to making the risk assessment available for review and comment by the general public, we requested an external, formal, independent peer review of the assessment by recognized experts in the field, consistent with guidelines of the U.S. Office of Management and Budget (OMB 2004). The objective of the peer review was to determine whether the risk assessment was scientifically sound, transparent, and consistent with international standards (e.g., those by the OIE); the application of external assessments or models was appropriate; and the assumptions were justified, supported and reasonable. Comments submitted by the public on the proposed rule were submitted to the peer reviewers for their consideration. The peer review process was coordinated by an independent private contractor.

The full peer review report may be viewed at *http://www.aphis.usda.gov/peer_review/peer_review_agenda.shtml.* Additionally, we have included below, under the heading ''Final Report from Peer Review of APHIS' Risk Assessment and Responses to Peer Reviewer Questions and Recommendations,'' APHIS' responses to reviewer comments that we consider representative of the content-related questions and recommendations of the report, and our response to those questions and recommendations. In summary, the

[1] The regulations regarding BSE minimal-risk regions apply to bison as well as cattle. In §§ 93.400, 94.0, and 95.1 of the regulations, *bovine* is defined as *Bos taurus, Bos indicus,* and *Bison bison.* Although the research and other data cited in this rulemaking refer to bovines other than bison (i.e., to ''cattle''), there is no evidence to indicate that the BSE susceptibility of bison differs from that of cattle. We therefore assume that our conclusions based on cattle-specific evidence discussed in this rulemaking are also applicable to bison. Given that no cases of BSE have been detected in bison, this is likely a conservative assumption. The provisions of this rule apply to bovines as defined in the regulations, which include bison.

reviewers found that the methods used in the risk assessment were scientifically rigorous in terms of using existing literature and models appropriately and making sound assumptions and that the risk assessment itself adhered to international risk assessment standards. The reviewers also agreed with the conclusion that the likelihood of establishment of BSE in the U.S. cattle population is negligible.

In addition to being supportive of the methods, evidence, and conclusions presented by APHIS in the risk assessment, the reviewers made several useful suggestions for its improvement. We made several clarifications and updates in consideration of these comments. While we expect that the changes improve the transparency and accuracy of the document, they do not alter our conclusion that the risk to the United States of BSE—i.e., the likelihood of establishment and the potential impacts of cases that may occur even without establishment—resulting from the changes outlined in the proposed rule is negligible.

Removal of Partial Delay of Applicability of Provisions of January 2005 Final Rule

Our January 2005 final rule made eligible for importation from Canada meat that is derived from bovines slaughtered in BSE minimal-risk regions, as well as certain other specified commodities derived from such bovines, provided certain specified risk-mitigating conditions have been met. The risk analysis we conducted for that rulemaking indicated a low BSE risk from such commodities derived from bovines of any age if certain conditions are met (APHIS 2004). These conditions include the removal of those tissues considered at particular risk of containing the BSE agent in infected animals (specified risk materials, or SRMs). In that rulemaking, we discussed regulatory requirements implemented by FSIS in 2004 that banned SRMs from the human food supply in the United States, and we stated that the Canadian Government had established similar safeguards in Canada.

Consequently, we provided that meat, meat byproducts, meat food products, and offal derived from bovines are eligible for importation from BSE minimal-risk regions if the following conditions, as well as all other applicable requirements of the regulations, are met:

- The commodity is derived from bovines that have been subject to a ruminant feed ban equivalent to the requirements established by the U.S. Food and Drug Administration at 21 CFR 589.2000;
- The commodity is derived from bovines for which an air-injected stunning process was not used at slaughter; and
- The SRMs and small intestine of the bovines from which the commodity was derived were removed at slaughter.

Additionally we provided that tallow composed of less than 0.15 percent insoluble impurities that is not otherwise eligible for importation under 9 CFR 95.4(a)(1)(i), and gelatin derived from bones of bovines that is not otherwise eligible for importation under 9 CFR 94.18(c) are eligible for importation from BSE minimal-risk regions, provided certain specified conditions are met.

In the economic analysis we conducted for the January 2005 final rule, we evaluated the potential economic effects of implementing that rulemaking, including implementation of the provisions allowing the importation of meat and other commodities derived from bovines slaughtered in BSE minimal-risk regions (APHIS 2004a).

In March 2005, APHIS published a document in the **Federal Register** that, pursuant to an announcement by the Secretary of Agriculture on February 9, 2005, delayed the applicability of the provisions in our January 2005 final rule as they apply to the importation from Canada of the following commodities when derived from bovines 30 months of age or older when slaughtered: (1) Meat, meat food products, and meat byproducts other than liver; (2) whole or half carcasses; (3) offal; (4) tallow composed of less than 0.15 percent insoluble impurities that is not otherwise eligible for importation under 9 CFR 95.4(a)(1)(i); and (5) gelatin derived from bones of bovines that is not otherwise eligible for importation under 9 CFR 94.18(c).

In his February 9, 2005, announcement, the Secretary stated that because ongoing investigations into recent finds of BSE in Canada in animals over 30 months of age were not complete, he felt it prudent to delay the effective date for allowing imports of meat from bovines 30 months of age and over. He also indicated that the delay of applicability would address concerns that the January 2005 final rule allowed the importation of beef from bovines 30 months of age or older, while continuing to prohibit the importation of live cattle 30 months of age or older for processing in the United States. The Secretary stated that the Department would consider and develop a plan—based on the latest scientific information and with the protection of public and animal health as the highest priority—to allow imports of live bovines 30 months of age or older as well as beef from animals 30 months of age and older.

Since the date of the partial delay of applicability of our January 2005 final rule, we have obtained additional information regarding all aspects of the issues that prompted the delay of applicability and have conducted additional analyses in line with the plan as described. The risk assessment for this final rule demonstrates the negligible BSE risk from the importation of additional classes of live cattle, including those 30 months of age or older. This includes acknowledging the potential risk pathway that could be available if the SRMs from infected imported cattle entered the ruminant feed supply in contravention of current feed regulations. The negligible risk from the importation of live older cattle therefore gives further support to the conclusion of the risk analysis conducted for our January 2005 final rule regarding meat and meat products derived from bovines of any age in BSE minimal-risk regions. Specifically, the risk is even lower for the importation of meat and meat products, as the SRMs will be removed in accordance with the regulations, than for live bovines.

Therefore, this document will remove the partial delay of applicability of the January 2005 final rule. The removal of the partial delay of applicability will become effective on the date that the other provisions of this document become applicable. Including the removal of the partial delay of applicability in this final rule and making it effective along with the other provisions of this rule will enable APHIS to more efficiently communicate the necessary implementation instructions to U.S. Customs and Border Protection and to APHIS field personnel. Additionally, it will provide commercial entities more flexibility in carrying out import planning based on the relative economic merits of importing live bovines or meat and other products derived from bovines.

Because, for reasons of efficiency for APHIS and the regulated community, the Secretary has decided to remove the delay in applicability as part of this document, we looked at the economic effects of doing so in combination with allowing the importation of bovines born on or after March 1, 1999. Although we previously analyzed the economic effects of allowing the importation of meat and other products derived from bovines 30 months of age or older, the economic analysis for this rule provides an updated analysis.

Public Comments on the January 2007 Proposed Rule

We solicited comments concerning our January 2007 proposal for 60 days ending March 12, 2007. We received close to 400 comments by that date. The commenters included cattle industry and farm bureau associations, consumer groups, representatives of the Canadian Government and other foreign countries, State Departments of Agriculture, food processing companies, individual cattle producers, and other members of the public.

Subjects of Comments Received

A number of commenters supported the rule and recommended no changes to the proposed provisions. Other commenters supported the rule in general but recommended certain changes or actions. Other comments consisted only of recommended changes, objections to the rule in general or to specific provisions, or requests for clarification. We discuss below by topic the issues raised by commenters and our response to those comments.

General Opposition to Imports

Issue: A number of commenters expressed general opposition to the importation of any bovines or bovine products from BSE minimal-risk regions.

Response: It appears to us that these commenters are not addressing just our January 2007 proposed rule, but, rather, also the January 2005 final rule that recognized the category of BSE minimal-risk regions and established conditions for the importation of certain ruminants and ruminant products from such regions.

As we discussed in the January 2005 final rule, the comprehensive analysis and evaluation we conducted for that rulemaking led to the conclusion that the conditions specified in that rule for the importation of ruminants and ruminant products from BSE minimal-risk regions would be effective and would therefore protect against the introduction of BSE into the United States. Our January 2007 proposed rule considered expansion of the types of commodities allowed importation from BSE minimal-risk regions, based on an evaluation of the risk (i.e., the likelihood of establishment and the potential impacts of cases that may occur even without establishment) of importing from Canada live animals, blood and blood products, and the small intestine excluding distal ileum.) Given the determination of negligible BSE risk associated with the provisions of this final rule, and the findings associated with our 2005 final rule, there is no scientific basis for increasing restrictions from those already in effect or being established in this rule.

Issue: A number of commenters expressed opposition, without further explanation, to the importation from BSE minimal-risk regions of live bovines 30 months of age or older and to the importation of products derived from such bovines.

Response: We discussed in our January 2007 proposed rule the rationale for our proposal to allow the importation, under certain conditions, of live bovines 30 months or older from BSE minimal-risk regions. We discussed further the assessment of the disease risk of allowing such imports that we conducted before issuing our proposal. It is not clear to us which factors in our risk assessment or discussion of rationale were being addressed by those commenters who expressed general opposition to the importation of live bovines 30 months of age or older. We continue to consider the BSE risk from importing live bovines under the conditions specified in this rule to be negligible.

Issue: Several commenters who expressed opposition to the proposed rule expressed concern that the agent that causes BSE has yet to be fully characterized. The commenters stated that what we know about BSE is mostly supposition, which should be a compelling reason not to allow the importation of cattle from a region of known BSE outbreaks. One commenter stated that research recently conducted at Yale University suggests that one of the agents that activates BSE may be viral, which, according to the commenter, implies that a feed ban is effective only when the virus is not present or active.

Response: As one of the commenters noted, some researchers (Manuelidis *et al.*, 2007) suggest that diseases characterized as transmissible spongiform encephalopathies (TSEs), such as BSE, may be caused by viruses, although, at this point, no infection-specific nucleic acids have been identified.

Experimental data and epidemiological studies strongly suggest that contaminated feed containing ruminant proteins derived from infected animals was the source of the epidemic, and that the epidemic was perpetuated through the use of these materials in ruminant feed. APHIS considers that regardless of the characteristics of the BSE causal agent, it is clear that the epidemic was sustained and amplified by the recycling of BSE infected cattle into cattle feed. Despite the difficulty in definitively determining the causal agent of BSE, risk factors for transmission of the agent have been identified. The identification and characterization of these risk factors through epidemiological and experimental study have allowed the development of effective mitigations to prevent BSE spread. The development and demonstrated effectiveness of those mitigations does not require identification of the agent itself. We consider mitigation measures that address the risk factors for BSE to be effective regardless of the precise nature of the BSE agent.

Prevalence of BSE in Canada

Although the provisions of this rule apply to any region recognized by APHIS as a BSE minimal-risk region, at present APHIS recognizes only one country, Canada, as such a region. Therefore, in evaluating the BSE risk of implementing this rule, we conducted an assessment of the risk of importing bovines and bovine products from Canada under the provisions of our proposed rule (APHIS 2006b). In our risk assessment, we laid out the likely risk pathway (i.e., a series of occurrences or steps necessary for disease to enter and become established).

In conducting our risk assessment, one of the factors we took into account was the prevalence of BSE in Canada, since prevalence is one factor that affects the likelihood of a BSE-infected bovine being imported into the United States. We received a number of comments from the public that addressed our estimate of the prevalence of BSE in Canada. Although some of the comments supported our estimate of BSE prevalence in Canada, in general the commenters maintained that such prevalence is either higher than we estimated, may be increasing, or is uncertain, or that our methods of estimating it were flawed. The methodology we used to arrive at such estimates is discussed in detail in our risk assessment. However, to provide some context for the issues raised by commenters and discussed below, we summarize here the models that we used in conducting our assessment.

The number of BSE cases detected through surveillance understates the disease prevalence because exposed animals may be incubating disease and carrying infectious material in their tissues without presenting clinical symptoms. Like many transmissible spongiform encephalopathies (TSEs), BSE has an incubation period of several years. Therefore, the disease is not detectable in its early stages with current technology. Moreover, surveillance will miss a proportion of detectable cases. Therefore, we applied statistical methods to the available epidemiologic and surveillance data to estimate, with attendant uncertainty, the prevalence of BSE in Canada.

We used two related, but distinct, methods to estimate BSE prevalence in Canada: the BSurvE model and the Bayesian Birth Cohort (BBC) model. Given its international prominence, we used the European Union (EU) BSurvE model (Wilesmith *et al.*, 2004, 2005), recently developed for the purpose of estimating BSE prevalence in national herds. The BSurvE model is noteworthy for its sound epidemiologic structure, including stratifying cattle by age and cause of death (i.e., healthy slaughter, fallen stock, casualty slaughter, or clinical suspect) and accounting for the relative likelihood of detecting BSE in various strata (EFSA 2004). The BSurvE model structure calculates BSE surveillance point values (random sample size equivalents) represented by targeted Canadian sampling of certain groups of cattle in which BSE cases are more likely to be detected. This approach allows for the inclusion of infected, but undetected, cases (such as young animals in the early stages of incubation) in the estimate, which would be ignored by conventional methods.

The other prevalence estimation model that we used is the BBC model. This model uses the BSurvE model structure and incorporates additional information. Unlike BSurvE, the BBC model adopts a Bayesian statistical framework to incorporate prior information about the decreased incidence of BSE observed in animals born after a feed ban equivalent to the initial ruminant-to-ruminant feed ban introduced in the United Kingdom in 1988.

Issue: One commenter stated that BSE has become ''firmly established'' in Canada.

Response: We disagree with the comment, which we consider to erroneously equate disease presence, which may be transient, with disease establishment. In epidemiology, an infectious disease has become established in a population when the disease is perpetuated in the population without the need for reintroduction from an external source. For example, OIE's sister agency, the international Commission on Phytosanitary Measures (CPM) defines plant pest establishment as ''the perpetuation, for the foreseeable future, of a nonindigenous biological agent within an area after entry'' (CPM 2001). With the implementation and continuation of a feed ban in Canada, all evidence points toward eventual eradication, rather than perpetuation of BSE in that country.

Issue: One commenter stated that, since the time APHIS published its January 2005 final rule classifying Canada as a BSE minimal-risk region, the Agency has presented no new evidence that would support allowing the importation from Canada of the additional commodities discussed in the proposed rule. In fact, stated the commenter, evidence points to Canada having a higher prevalence of BSE than APHIS had previously determined.

Response: As discussed in our January 2007 proposed rule, we revisited our earlier conclusions and policies by conducting a rigorous risk assessment based on current available scientific knowledge of the disease. We used peer reviewed risk assessment models in our analysis to estimate the prevalence of the disease in Canada and to analyze the likelihood of BSE establishment in the United States and the potential impacts of cases that may occur even without establishment as a result of the importation into the United States of the bovine commodities considered in this rule. The risk assessment itself was peer reviewed by experts in the field. As noted above, the reviewers agreed with the conclusion that the risk of establishment of BSE in the U.S. cattle population is negligible and noted that several assumptions in the risk assessment actually over-estimate the risk, so the overall finding that the BSE risk is negligible is reasonable. Based on the results of the risk assessment, we concluded that we could safely import Canadian cattle born on or after March 1, 1999, blood and blood products, and small intestines, excluding the distal ileum.

Issue: Several commenters raised questions about the ability to statistically determine BSE prevalence ''trends'' in Canada, but reached different conclusions. Some commenters stated that the trajectory of BSE prevalence in Canada cannot be determined by available surveillance data and that, therefore, BSE prevalence in Canada may be increasing. On the other hand, another commenter requested that APHIS make clear that, despite the Agency's use of the BSurvE Prevalence B estimate, prevalence should not be assumed constant over time. The commenter requested that APHIS emphasize that lack of statistical evidence that prevalence varies from cohort to cohort is likely the result of inadequate statistical power,[2] and that, nevertheless, BSE prevalence in Canada is most likely decreasing.

Response: In our risk assessment for this rule, we acknowledge that, given the rarity of BSE cases in Canada, the surveillance data are unlikely to provide adequate statistical power to detect any trend. However, as discussed in the risk assessment, we consider it likely that the prevalence of BSE in Canada will decrease over time. With so few total BSE cases observed in Canada, the statistical power to detect differences in prevalence between cohorts is low. The peer reviewers of our risk assessment concur with our conclusion. (RTI 2007, pp. 6–26, 6–27).

Issue: One commenter estimated the Canadian BSE prevalence to be 6.4 cases per million cattle. Further, the commenter stated that this prevalence estimate is smaller than the risk estimate provided by one of APHIS' own risk assessments for a more pessimistic value of the misfeeding rate. The commenter suggested that this discrepancy reflects optimistic modeling assumptions in APHIS' risk assessment.

Response: We disagree with the commenter's analysis. Although the commenter's alternative prevalence estimate, based on a simple extrapolation method, falls within the 90 percent confidence interval [3] of APHIS' BSurvE Prevalence B estimate (2.4 to 6.8 cases per million adult cattle) with an expected value of 3.9 per million case per million adult cattle (APHIS 2006c, table 5), it is based on different assumptions. Based on an analysis of BSE testing in the EU in 2001 and 2002, the commenter's prevalence estimate assumes that targeted ''risk cattle'' are only 10 times more likely to test positive for BSE than non-targeted routinely slaughtered cattle. Considering the BSE testing conducted in the EU during 2001–2004 (EC 2005a, table 3, p. 23), cattle in the

[2] The power of a statistical test is the probability of rejecting the null hypothesis when it is false. The power depends on the test level of significance, the magnitude of effect under the alternative hypothesis, sample size, and variability in the population. Rice (1988, pp.361–364) describes the calculation of statistical power for comparing two independent samples.

[3] A confidence interval is a statistical range with a specified probability that a given parameter lies within the range. For example, the 90 percent confidence interval of a distribution indicates the range of values that we are 90 percent certain include the parameter value of interest. It extends from the 5th percentile, or 5 percent confidence level, at the low end of the distribution of the 95th percentile, or 95 percent confidence level at the high end of the distribution. Similarly, a 95 percent confidence interval would extend from the2.5 percent confidence level to the 97.5 percent confidence level.

European BSE risk animals category (emergency slaughter, clinical suspects, and fallen stock) are 22 times more likely to test BSE positive than cattle in the healthy slaughter category. Using the commenter's simple extrapolation method and these more up-to-date data on BSE test positive ratio, the resulting BSE prevalence estimate would be 2.9 per million cattle. Although actually lower than the expected value for the BSurvE estimate, this value also falls within the 90 percent confidence interval of the Agency's BSurvE Prevalence B estimate, described above. APHIS calculated both the BSurvE Prevalence B estimate and the Bayesian Birth Cohort (BBC) prevalence estimate, but judged the latter to better characterize the BSE prevalence in Canada over the next 20 years, due to the expected downward pressure exerted on the disease by a feed ban.

With regard to the commenter's suggestion of a discrepancy, the commenter provides no specific reference to ''the risk estimate provided by one of APHIS' own risk assessments,'' but appears to refer to the main body of the 2005 report of Cohen and Gray (available at *http://www.fsis.usda.gov/PDF/BSE_Risk_Assess_Report_2005.pdf*), which was prepared for the USDA's Food Safety and Inspection Service (FSIS). Cohen and Gray (2005) do not estimate Canadian BSE prevalence, but rather the effect of introducing 500 BSE-infected cattle into the United States, and the pessimistic misfeeding assumption estimates that introduction would result in an expected 2,600 new cases over 20 years. There is no discrepancy because this aspect of the Cohen and Gray 2005 report is not relevant to our estimate of Canadian BSE prevalence.

Issue: Based on APHIS'' statements that animals are infected within their first year, and that feed produced prior to the feed ban would not be available for longer than a year, one commenter stated that additional undetected infected animals must have existed and been rendered in order to provide infectivity to detected cases. Therefore, stated the commenter, adding in these ''undetected'' animals raises the number of Canada's known and measurable BSE cases rises from 10 to 14, and APHIS' estimate of BSE prevalence in Canada based on 10 animals is low.

Response: We disagree with the commenter's analysis and conclusion, which assumes that we did not take into account the possibility of undetected cases of BSE in arriving at our prevalence estimate. APHIS' estimate of the prevalence of BSE in Canada was adjusted to account for cases that would not be tested and for false negative test results. Also, although the bulk of feed will be consumed within a year after it is produced, residual infectivity may remain in the feed supply chain for an extended period. For example, examination of BSE cases in animals born in the United Kingdom after the 1996 ''reinforced feed ban'' suggests that these animals may have been infected from the persistence of the BSE agent in residual feed in storage bins (SEAC 2005).

Issue: One commenter suggested that it is likely that Canada has numerous cattle over 30 months of age that are presently incubating the BSE disease, rather than just a few (4.1) as suggested by APHIS.

Response: The estimate of 4.1 BSE-infected animals in the standing Canadian adult cattle population was based on the expected BSE prevalence in Canada under the BBC model. Using the estimated prevalence under BSurvE Prevalence B resulted in an estimate of 23.2 BSE-infected animals in the standing Canadian adult cattle population. Although, quantitatively, our risk assessment did not assume a decline in BSE prevalence over the next 20 years, we qualitatively consider such a decline to be likely because of continued compliance with the feed ban. Therefore, in assessing the BSE risk associated with imports from Canada over the next 20 years, we consider the result of the BBC model to be the more applicable prevalence estimate for use in our quantitative exposure model.

Issue: One commenter indicated that although it is unclear whether the APHIS estimates of Canadian BSE prevalence included the BSE case confirmed on August 23, 2006, the APHIS estimates certainly do not take into account the case confirmed on February 7, 2007.

Response: We estimated Canadian BSE prevalence based on a 7-year surveillance period through August 15, 2006. This surveillance period included the detection of nine BSE cases of Canadian origin reported through August 2006. Through surveillance conducted from August 16, 2006, through April 2007, Canada detected one BSE case born in 2000 and another born in 2001 (CFIA 2007). The BSE prevalence estimation methods used by APHIS (2006a) require detailed data to stratify tested cattle by age and cause of death (healthy slaughter, fallen stock, casualty slaughter, or clinical suspect) that are unavailable for the more recent surveillance period. However, we can assess the sensitivity of our previous Canadian BSE prevalence estimates by adding the two additional cases without changing the BSE surveillance points accumulated by Canada during the 7-year surveillance period through August 15, 2006 (APHIS 2006a, table 4).[4] This approach results in a revised table of BSurvE points and BSE cases by birth year cohort that reflects a total of 11 BSE cases of Canadian origin reported through April 2007 (APHIS 2007, table i).

Using the same methods described in USDA's estimate of BSE prevalence in Canada (APHIS 2006c), we obtain updated Canadian BSE prevalence estimates:

• BSurvE Prevalence B: 90 percent confidence interval = 3.0–8.0 cases per million adult cattle
• Bayesian Birth Cohort (BBC, Winbugs): 90 percent confidence interval = 0.47–1.2 cases per million adult cattle

Because the updated confidence intervals contain the previous expected value estimates of 0.68 per million (BBC) and 3.9 per million (BSurvE Prevalence B) (APHIS 2006c), we conclude that the prevalence estimate is not sensitive to the addition of the two additional BSE cases discovered in Canada in August 2006 and February 2007.

Issue: One commenter stated that APHIS' expectation that the prevalence of BSE in Canada will continue to decline from its present minimal level does not acknowledge that the prevalence of BSE in Canada right now is very uncertain. The commenter's independent estimate of the current Canadian BSE prevalence is ''on the order of 4–6 per million.''

Response: APHIS' risk assessment addresses the uncertainty in the prevalence of BSE in Canada by considering estimates that differ by more than a factor of five (APHIS 2006b). The BBC prevalence estimate has an expected value of 0.68 cases per million adult cattle.[5] The BSurvE Prevalence B estimate has an expected value of 3.9 per million. The

[4] In the BsurveE model, specific ''point values'' are assigned to each test sample, based on the surveillance stream or subpopulation of animals from which it was collected, as well as the likelihood of detecting infected cattle in that subpopulation. A sample from the specific surveillance subpopulation where BSE is most likely to be detected—*i.e.*, a middle adult clinical suspect—provides the most surveillance points. Conversely, a sample from the subpopulation where BSE is least likely to be detected—generally routine slaughter—provides the least points.

[5] The BBC model provides a more precise estimate of BSE prevalence in Canada by combining the epidemiologic theory and application of surveillance data underlying the BSurvE model with additional information about the effect of the feed ban on prevalence.

commenter's own method of estimation—''on the order of 4–6 per million——provides an estimate on the same order of magnitude as the BSurvE Prevalence B estimate of current prevalence. In either case, prevalence is extremely low.

Issue: One commenter stated that, although APHIS estimates that BSE prevalence in Canada is about 6.8 or more times greater than in the United States (0.68 vs. 0.1 per million), this does not adjust for the important fact that the first BSE case in the United States was imported from Canada.

Response: The APHIS October 2006 estimate of BSE prevalence in Canada is based on the nine BSE cases of Canadian origin that had been confirmed in North America as of August 23, 2006. This total includes a case of BSE that was confirmed in Washington State on December 25, 2003 (APHIS 2006c, p. 1). The estimate of BSE prevalence in the United States excludes this case.

Issue: One commenter stated that the calculation of BSE prevalence in Canada used in APHIS' risk assessment excluded the European-born case detected in 1993.

Response: The 1993 Canadian BSE case of European origin was likely part of the original exogenous source of BSE infectivity introduced into Canada that caused the subsequent generation of indigenous cases. Imported cases of BSE reflect an exposure to the disease that occurred elsewhere, and, therefore, are not generally included in estimates of prevalence that reflect native exposure. Similarly, when APHIS estimated the prevalence of BSE in the United States, the BSE-infected cow of Canadian origin that was detected in Washington State in December 2003 was excluded from the analysis, because it was an imported animal. In addition, as noted in APHIS' estimation of BSE prevalence in Canada (APHIS 2006c, p. 5), in accordance with OIE guidelines (which indicate that surveillance points totals taken into account in assessing a country's BSE risk be accumulated over a maximum of 7 consecutive years), the estimated prevalence of BSE in Canada is based on surveillance data accumulated over a 7-year period beginning August 16, 1999. The 1993 case predates the OIE 7-year period.

Issue: One commenter indicated that APHIS should not take action on the proposal until real surveillance data (not model-based predictions) show that the BSE problem has abated. The commenter stated further that denying Canada's BSE problem, or assuming it away with unvalidated and incorrect risk modeling assumptions, does not responsibly manage BSE risks to the United States.

Response: We disagree with the commenter. In low BSE prevalence populations such as Canada, surveillance at levels that meet or even greatly exceed OIE guidelines provide insufficient statistical power to reliably detect changes in BSE prevalence over time. In other words, starting with a very low number of infected animals makes it very difficult to statistically demonstrate decreases in that number, even when testing a relatively large number of animals.

The OIE Guidelines for BSE Surveillance (Type A) call for countries to accumulate 300,000 BSE surveillance points over 7 consecutive years in order to detect with 95 percent confidence a prevalence level of at least one case of BSE per 100,000 animals (OIE 2006, Appendix 3.8.4).

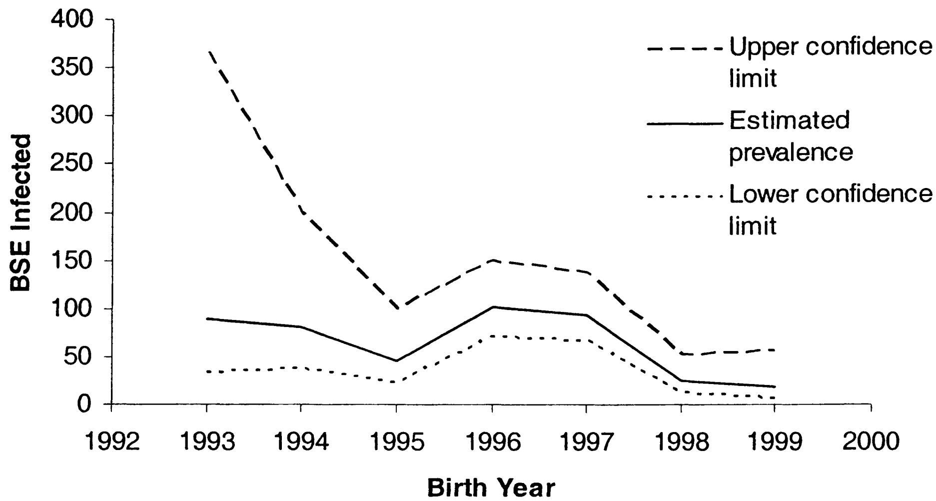
To illustrate the comparative difficulty in demonstrating trends in low versus high prevalence populations, consider two hypothetical countries that have accumulated 1 million BSE surveillance points for each of two cohorts: Animals born before and animals born after the introduction of a ruminant-to-ruminant feed ban. Under this scenario, sampling levels in both countries far exceed the OIE guidelines. Assume, however, that the two countries differ with respect to their initial prevalence—i.e., the initial prevalence in ''Country A'' is 1 infected animal per 10,000 animals, while that in ''Country B'' is 1 infected animal per 100,000 animals.

For a given surveillance level, the statistical power of a hypothesis test can be evaluated as a function of the supposed change in BSE prevalence between cohort 1 (pre-feed ban) and cohort 2 (post-feed ban). The conventional minimum statistical power criterion is 80 percent. In other words, the probability that a statistical analysis will detect a true difference across groups should be at least 80 percent. The conventional significance level is 5 percent, meaning that we would conclude that a result was nonrandom if it were 5 percent or less likely to occur by chance alone. In our hypothetical scenario, the power of the surveillance in the country with higher prevalence, Country A, to detect a 50 percent decline in BSE prevalence is 98 percent. In comparison, the power of the surveillance in the lower prevalence Country B to detect a 50 percent decline in BSE prevalence is only 25 percent. In other words, if the Country B feed ban actually led to a 50 percent decline in BSE prevalence and the equivalent of 2 million random samples were collected (6.7 times the level under the OIE guidelines), there would still be a 75 percent chance of concluding that the prevalence was unchanged from its initial level of 1 infected animal per 100,000 animals.

An important implication of the low statistical power of sampling in low prevalence populations is that BSE surveillance data are unlikely to provide a purely statistical basis for making a determination about the date when a specific intervention (e.g., a ruminant-to-ruminant feed ban) becomes effective, even when large amounts of surveillance data are available. For example, according to the OIE (2007a), the annual incidence of reported BSE cases in the Netherlands dropped from 13.2 to 0.8 per million adult cattle from 2001–2005.[6] Despite the EU BSE surveillance requirements for testing all risk animals over 24 months of age and all healthy slaughter cattle over 30 months of age, Figure 1 shows that application of the BSurvE (Prevalence A) model to Netherlands BSE surveillance data does not yield sufficient statistical power to draw clear distinctions among birth year cohorts as prevalence declines (Figure 1).

[6] The OIE Terrestrial Animal Code (Chapter 1.1.1., Article 1.1.1.1) defines incidence as ''the number of new cases or outbreaks of a disease that occur in a population at risk in a particular geographical area within a defined time interval (OIE 2006b).''

Figure 1. Application of BSurvE to Netherlands BSE surveillance data



Source: Heres et al. (2005, table 4.1)

Note that, in figure 1, there is a decrease in estimated prevalence between 1998 birth-year cohorts and 1999 birth-year cohorts, while, at the same time, there is an increase in the upper confidence limit. This apparent paradox is indicative of another shortcoming of relying on surveillance data alone to determine whether BSE prevalence has been reduced. Because fewer animals from the most recent birth year cohorts are tested when sent to slaughter, uncertainty about the prevalence in the most recent cohorts is much greater than in older cohorts. Furthermore, the lower likelihood of detecting BSE in young infected animals means that the young animals that are tested contribute relatively little to reducing uncertainty in the true (as opposed to apparent) BSE prevalence. These two sources of uncertainty in young birth cohorts (low numbers of animals tested, and little value in the surveillance data that are gathered from them) cause an asymmetrical increase in the upper limit of the confidence interval compared to the lower confidence limit. This effect on the upper confidence limit on BSE prevalence is most pronounced for the most recent birth year cohorts which are less likely to be tested and will not have lived long enough to manifest BSE, even if they have been infected. Wilesmith *et al.* (2004, figure 3) further illustrates this same concept.

Consequently, if the effectiveness of a country's safeguards against BSE amplification were determined strictly by setting a tolerance for the upper confidence limit on BSE prevalence associated with the ''real surveillance data,'' one might reach the incorrect conclusion that prevalence is increasing, when in actuality, the result is simply due to testing fewer and younger animals in the most recent birth year cohorts. Finally, relying solely on surveillance data fails to account for under reporting of disease due to the lack of diagnostic sensitivity to detect BSE at an early stage of disease. By accounting for the possibility of false negative test results, epidemiologic models such as BSurvE are recognized as providing a more accurate estimate of true BSE prevalence than the apparent prevalence measured by surveillance data alone.

Issue: One commenter stated that the output from the BSurvE model used by Canada in 2005 grossly underestimated Canada's 2006 and 2007 BSE prevalence and, therefore, the BSurvE model is unreliable for estimating Canada's BSE prevalence. The commenter stated further that, at the minimum, APHIS should determine the erroneous inputs that resulted in the failed prediction in 2005 and correct them.

Response: In the risk assessment conducted for this rulemaking, APHIS used its own prevalence estimate, not that of the Canadian Food Inspection Agency's (CFIA's) 2006 prevalence estimate, which was not based on BSurvE, but on a modified version that appears similar to the APHIS BBC model. The commenter cites CFIA's Assessment of the North American BSE Cases Diagnosed from 2003–2005 (Part II), which states that ''when the BSurvE model was recently applied to Canada's statistics and adjusted to account for the effectiveness of the 1997 feed ban (based on experiences with the 1988 feed ban in the United Kingdom), the resulting prediction was that it could be expected that three infected animals remain within the national herd'' (CFIA 2006, p. 13).

APHIS' estimation of BSE prevalence in Canada (APHIS 2006c) is that the expected prevalence values under the BBC and BSurvE Prevalence B models correspond to an expected number of BSE-infected animals in the standing Canadian adult cattle population of 4.1 and 23.2, respectively. APHIS further explains that it is important to note that this range of prevalence estimates represents uncertainty and not variability. BSE-infected animals are recruited into and exit from the adult cattle population over time, but at a given point in time, the number of infected animals in the population is a fixed but uncertain value.

Assuming the overall probability of infection remains constant over time, the actual number of infected cattle in the population at any given point in time would still vary randomly about the mean. This variability is incorporated in the model supporting the exposure assessment for live bovines by means of the Poisson variability distribution. Assuming a fixed mean prevalence of 4.1 and 23.2 BSE infected animals in the standing adult cattle population in Canada, the 95th percentile of the Poisson distribution are 7 and 31 BSE-infected animals in any given year, respectively. We note that these numbers are greater than the five BSE cases detected in Canada in 2006, which means that the greatest number of Canadian BSE cases identified in a single surveillance year is lower than even the 95th percentile of distribution.

Issue: One commenter stated that, if the United States were finding BSE cases at the same rate as in Canada, this would translate into roughly 40 BSE cases detected in the United States since January 2006, which would be regarded as a large number. The commenter stated further that, at this time, the BSE situation in Canada does not appear to be improving.

Response: We do not agree with the commenter. The commenter's conclusion appears to be based on a cursory estimate and does not provide an accurate comparison of BSE cases detected in Canada with a comparable number that would have been detected in the United States, given the larger U.S. cattle population. The commenter's comparison fails to take into account other years of surveillance, as well as the age and surveillance stream of tested animals. These data are extremely important for estimating BSE prevalence. A comparison based solely on the number of detected cases ignores infected animals with unapparent or undetected infections.

Table 1 provides a direct comparison of the estimated BSE prevalence in the current standing adult cattle population of the United States and Canada, respectively, using identical estimation methods (APHIS 2006a; 2006c).

TABLE 1.—COMPARISON OF ESTIMATED BSE PREVALENCE IN THE CURRENT STANDING ADULT CATTLE POPULATION OF U.S. AND CANADA

Country	BSE Prevalence Estimation Method	
	BSurvE prevalence B	BBC
	Expected value	
US	0.18×10^{-6}	0.10×10^{-6}
Canada	3.9×10^{-6}	0.68×10^{-6}

Despite the higher estimated BSE prevalence in the current standing adult cattle population in Canada compared to the prevalence of BSE in the standing adult cattle population in the United States, APHIS finds that, because of the extremely low BSE prevalence in Canada and the high levels of BSE controls in both Canada and the United States, the risk to the United States (i.e., the likelihood of establishment of BSE in the United States and the potential impacts of cases that may occur even without establishment) as a result of importing from Canada the bovine commodities considered in this rule is negligible (APHIS 2006b). Furthermore, as stated in our risk assessment, we expect that the prevalence of BSE in Canada will decrease continuously over the next several years. Peer reviewers of our risk assessment agreed (RTI 2007).

Issue: One commenter stated that Canada's ratio of positive cases per 10,000 cattle tested exceeds the ratio of 22 of the 25 EU-member countries; that only the ratios for the United Kingdom, Portugal, and Spain exceed Canada's 2006 ratio. The commenter noted further that even the countries of Ireland, Germany, and France, each of which are considered to have had widespread BSE exposure, have a lower ratio for positive cases detected per 10,000 head tested than does Canada. Another commenter stated that Canada's BSE prevalence is higher than that for Denmark, Belgium, and Austria, and is comparable to the rate in Germany. This commenter, who estimated the Canadian BSE prevalence to be 6.4 cases per million cattle, stated further that no one considers countries with a reported BSE rate of 1 to 2 cases per million animals (e.g., Denmark, Belgium and Austria) to have a minimal BSE risk, and that Canada is not a BSE minimal-risk region in any ordinary sense.

Response: The commenters' statements ignore important differences in BSE surveillance and cattle populations among countries, and a comparison based simply on the proportion of positive cases per number of cattle tested is inconsistent with the prevalence estimate approach taken by one of the commenters, as well as the prevalence estimate used by APHIS. Although calculating the proportion of infected animals detected per number of tested animals can serve as a useful tool, depending on the purpose for the calculation, it is not an estimate of prevalence. Rather, prevalence is defined as the number of infected animals in the total population at a given point in time. On the other hand, the calculation conducted by the commenter who referred to the ratio of positive cases per 10,000 cattle tested is similar to that conducted by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (CDC). In May 2007, using data similar to that analyzed by APHIS for this rulemaking, CDC calculated the proportion of Canadian-born BSE cases identified by Canadian authorities in relation to the total number of animals tested in that country. CDC then made a like calculation regarding BSE cases in U.S.-born cattle and compared the Canadian and U.S. results (CDC 2007). Unlike the estimate used by APHIS in the risk assessment for this rule, the CDC calculation is not an estimate of the prevalence of BSE in Canada, nor of the prevalence in the United States. Although the type of calculations conducted by CDC can be useful in comparing relative proportions of BSE detections per number of cattle tested, they do not, as noted above, constitute an estimate of prevalence.

The number of disease detections per total number of animals tested can be influenced by the criteria used for choosing animals for testing. For instance, Canada, like the United States, conducts targeted BSE surveillance, sampling those animals where disease is most likely to be detected if present. In contrast, EU countries routinely test large numbers of healthy animals at slaughter. Approximately 80 percent of cattle tested for BSE in the EU during 2001–2004 were healthy slaughtered animals, but ''risk animals'' were 22 times more likely to test positive (EC 2005a). One study (Giovannini *et al.*, 2005) estimates the true prevalence of BSE infection in several EU countries. Based on BSE testing in 2001, although Denmark, Finland, and the Netherlands had a lower proportion of positives per test than Canada, the estimated prevalences from this study for those three countries were higher than the expected values of our Canadian BSE prevalence estimates using the BBC estimation method (0.68 cases per million adult cattle) or BSurveE Prevalence B (3.9 cases per million adult cattle). Giovannini *et al.* (2005) estimated the following 90 percent confidence intervals for the prevalence of BSE infection: Denmark, 9 to 38 cases per million animals; Finland, 29 to 110 cases per million animals; and Netherlands, 8 to 34 cases per million animals. The methods used by APHIS to estimate Canada's BSE prevalence, including the BSurvE model developed by the EU Transmissible Spongiform Encephalopathies Community Reference Laboratory, account for the cattle population demographics, the age and surveillance category of animals tested, and the insensitivity of BSE diagnostics with regard to detection of the disease at an early stage of development.

The comments are based on an inappropriate comparison of a statistical estimate of the true BSE prevalence in Canada to the crude rate. Table 2 below compares the crude reported BSE rates in all five countries in 2005. Comparing the reported BSE rate of Canada to those of the countries listed by the commenters shows that Canada's reported rate is at least an order of magnitude below that of the others.

TABLE 2.—REPORTED BSE RATES IN 5 COUNTRIES

Country	Reported BSE cases per million adult cattle—2005
Canada	0.145
Denmark	1.289
Belgium	1.448
Austria	2.114
Germany	4.965

Source: OIE (2007a).

The problem with comparing the crude reported rate of BSE detection to the estimated true BSE prevalence is illustrated by the situation in Belgium. The reported rate of BSE in Belgium peaked in the 2001 surveillance year at 28.22 cases detected per million adult cattle (OIE 2007a). In comparison, Saegerman *et al.* (2004) applied the BSurvE model to the Belgian BSE surveillance data and estimated that the actual BSE prevalence in Belgium peaked at approximately 400 cases per million adult cattle in the 1995 birth year cohort. (The lag between the 1995 birth year and the 2001 surveillance year is consistent with the long BSE incubation period.)

With regard to the comment that countries with 1 to 2 cases per million animals are not considered to present minimal risk, APHIS notes that, prior to the 2005 revisions in the OIE guidelines on BSE, countries with a reported BSE rate of 1 to 2 cases per million animals could satisfy the prevalence criterion for the pre-2005 OIE BSE minimal-risk classification. Under the 2004 OIE Terrestrial Animal Health Code (Article 2.3.13.5), the criteria for a BSE minimal-risk country included a reported rate of less than two cases per million during each of the last four consecutive 12-month periods within the cattle population over 24 months of age. The OIE Code was modified in 2005 to include a revised country categorization system which more accurately reflected current scientific understanding of BSE. These modifications streamlined the number of country categories to three (negligible, controlled, or undetermined BSE risk) and also eliminated the numeric prevalence criteria for classifying the BSE risk status. The previous OIE minimal-risk category is now incorporated into the controlled risk category. We note that in 2007, the OIE recognized Switzerland as a BSE controlled risk region. Switzerland had a reported rate of 5.4 BSE cases per million adult animals in 2006 (OIE 2007a), greater than the 1 to 2 cases per million animals cited by the commenters.

APHIS disagrees with the commenter's statement that Canada does not qualify as a BSE minimal-risk region. APHIS regulations at § 94.0 define the standards for a region to be designated as a minimal-risk region. These include the standard that the region maintain ''risk mitigation measures adequate to prevent widespread exposure and/or establishment of the disease.'' Canada continues to meet this standard. The commenters provided no specific evidence to document how or why Canada does not meet the APHIS standards.

Issue: One commenter stated that the prior information [information using data from the United Kingdom feed ban] incorporated into the Bayesian models used to estimate prevalence of BSE-infected cattle in Canada may have resulted in estimates that are biased downward (to a limited degree) from the true burden. However, stated the commenter, the Bayesian models used to estimate prevalence in Canada (as of August 2006) are basically sound and a better approach than relying on the BSurvE Prevalence B estimate. Further, said the commenter, given the proviso that the models could overestimate the effectiveness of the feed ban, it is most likely that the actual prevalence of infected animals is between 0.68 and 3.9 animals per million adult cattle. The commenter stated that because it is likely that the Canadian feed ban was at least as effective as the initial United Kingdom feed ban, and based on available data, the true BSE prevalence in Canada is probably substantially closer to 0.68 cases per million animals than to 3.9 cases per million animals.

Conversely, several commenters suggested that APHIS rejected the higher prevalence estimate of the BSurvE model for the lower prevalence estimate of the BBC model, and that the BBC model prevalence estimate is not realistic in light of recent data.

Response: Although APHIS considered the results of both the BSurvE and the BBC prevalence estimation models, we consider the result of the BBC model as the more likely prevalence estimate to apply to the assessment of BSE risks associated with imports from Canada over the next 20 years in our quantitative exposure model, for the following reasons. APHIS estimated Canadian BSE prevalence based on surveillance conducted through August 15, 2006. (**Note:** This time period includes all cases of Canadian origin reported through August 2006 (APHIS 2006c).) From August 16, 2006, through April 2007, Canada accumulated approximately 44,980 additional BSE samples and detected two BSE cases (one confirmed on February 7, 2007, and another confirmed on May 2, 2007). Based on the negative binomial likelihood ratio, which considers the number of negative tests prior to one or more positives, the BSurvE Prevalence B estimate (with expected value of 3.9 cases per million animals) is indeed far more likely to be true than is the BBC prevalence estimate (with an expected value of 0.68 cases per million animals) for the current standing Canadian cattle population. However, the primary purpose of characterizing BSE prevalence in Canada's current standing herd (APHIS 2006c) was not to discuss or assume its implications for the present, but rather, to estimate prevalence for use as an input for the Harvard exposure model used in the Exposure Assessment of the analysis. Because BSE has a long amplification cycle (it takes an average of 7 years from the time that one animal is exposed, to the time that another might be exposed from infectivity produced by the first animal), the Harvard model is typically run with 20-year simulations to include roughly 3 amplification cycles. The prevalence estimates contained in APHIS' estimation of BSE prevalence in Canada (APHIS 2006c) are applied, unchanged, to the cattle imports projected over the next 20 years (2007–2026). Since we expect that the true prevalence will drop from its current level (whatever that may be), we anticipate that the lower, BBC estimate is a more realistic prediction (or even an overestimate) of average prevalence levels over this time frame. Consequently, APHIS considers the result of the BBC model, which incorporates the effect of a feed ban, to be better for application to the quantitative assessment of BSE risks associated with imports from Canada over this time period. In order to determine the impact of this assumption on the results, we applied the BSurvE estimate to the exposure model. We note that the likelihood of BSE establishment remained negligible (R_0 of 0.079, which is far less than 1), as did the potential impact of cases even without establishment (less than 4 clinical cases) over the 20 years of the analysis.

Issue: One commenter suggested that the APHIS risk model is not trustworthy because it has not been shown to have predictive validity and does not explain or predict a sustained flow of BSE cases from one geographic area (the Alberta region in Canada).

Response: It is not clear to us from the comment which model the commenter is referring to. Consequently, in this response, we discuss the Harvard model and the prevalence models used by APHIS. In either case, we disagree with the commenter's conclusion that the APHIS risk model is not trustworthy. The plausibility of the Harvard model was established by comparing its predictions for Switzerland against the observed progression of BSE within that country's cattle herd (Cohen *et al.*, 2003). It is not clear from the comment how the predictive validity of an infectious disease model is to be demonstrated over a 20-year time horizon, or how the model has failed to explain or predict the observed data. Regarding a sustained flow of BSE cases from one geographic area, assuming a constant proportion of BSE infected cattle in the herd, more BSE cases are found where large cattle populations exist.

As we discuss above in response to another issue raised by commenters, APHIS' estimation of BSE prevalence in Canada (APHIS 2006c) concludes that the expected prevalence values under the BBC and BSurvE Prevalence B models correspond to an expected number of BSE-infected animals in the standing Canadian adult cattle population of 4.1 and 23.2, respectively. Further, the prevalence estimates represent uncertainty and not variability. At any given point in time, the number of infected animals in the population is a fixed (although uncertain) value, although over time the actual number of infected cattle in the population would vary randomly about the mean of the probability distribution, as BSE-infected animals are recruited into and exit from the adult cattle population (i.e., some are newly infected and some die). Even assuming that the probability of infection remains constant, over time the actual number of infected cattle in the population would vary. This variability is incorporated in the model supporting our exposure assessment for live bovines by means of the Poisson variability distribution. Assuming a fixed mean prevalence of 4.1 and 23.2 BSE-infected animals in the standing adult cattle population in Canada, the 95th percentile of the Poisson distribution is respectively 7 and 31 BSE-infected animals in any given year. As we noted above, these numbers are greater than the five BSE cases detected in Canada in 2006, which means that the greatest number of Canadian BSE cases identified in a single surveillance year is lower than even the 95th percentile of distribution. While this observation does not statistically validate (confirm) the APHIS estimates of Canadian BSE prevalence, neither does it invalidate them, as the commenter seems to suggest. Furthermore, the prevalence estimates are applied not only to the current standing population, but also to the next 20 years.

BSE Data From the United Kingdom

In our January 2007 proposed rule and its supporting risk assessment, we discussed data associated with a ruminant-to-ruminant feed ban in the United Kingdom and indicated that experience in the United Kingdom demonstrates that implementation of a ruminant-to-ruminant feed ban causes BSE prevalence to decrease. We noted that animal feed restrictions were implemented in the United Kingdom in 1988, when the use of ruminant MBM in ruminant animal feed was banned. In September 1990, the use of specified bovine offals was banned for use in any animal feed. This ban prohibited the use in any animal feed of bovine tissues with the highest potential concentration of infectivity. In 1994, the use of mammalian protein—not just ruminant protein—was banned from ruminant feed. In 1996, feeding of any farmed livestock, including fish and horses, with mammalian MBM was completely banned. As a result of reducing the recycling of infectivity, the annual incidence of BSE fell by 99.4 percent, from 36,680 in 1992 to 203 in 2005 (DEFRA 2006b). There is, therefore, every reason to expect downward pressure on the prevalence of BSE in any country that implements a feed ban.

Issue: One commenter stated that, of 180,986 confirmed cases of BSE in Great Britain, the year of birth of the infected animal is unknown in 43,342 cases, and the large percentage of animals whose birth year is unknown casts doubt on the ability to determine the timeframe of an effective feed ban and, and further, makes it doubtful that all BSE-infected cattle in Canada are going to show clinical signs of the disease only if they were born before March 1, 1999. The commenter also stated that Japan has reported cattle as young as possibly 20 months of age or younger as testing positive for BSE.

Response: It is not clear to us how the information presented by the commenter supports the conclusions the commenter reached. However, we consider it useful to provide some clarification regarding the information presented. With regard to the proportion of BSE cases in Great Britain for which the date of birth is unknown, our risk assessment included a sensitivity analysis that takes into account that general source of uncertainty. (Sensitivity analysis evaluates the degree to which changes in the assumptions used in a model affect the model's results.) We made no assumptions as to whether Great Britain's feed ban is or has been effective, but applied the same proportional drop in cases observed in the United Kingdom to the Bayesian analysis that was performed to estimate BSE prevalence in Canada's standing cattle herd.

The commenter's statement that it is doubtful that only animals born before March 1, 1999, would show clinical signs of BSE indicates a potential confusion between the likelihood of exposure as expressed in terms of the date of the effectively enforced feed ban (and, thus, the potential for exposure) and the likelihood of an exposed animal developing clinical signs (which is based on age and amount of exposure, and the amount of time that has elapsed since exposure). In neither our risk assessment nor our proposed rule do we conclude that only infected animals born before March 1, 1999, would show clinical signs of the disease. Based on Canada's system of regulations, compliance and enforcement, and the length of time we expect pre-feed ban feed to persist in the system, we conclude that animals born on or after March 1, 1999, have an extremely low likelihood of exposure to BSE. Any animal, however, exposed to an infectious dose of the BSE agent and allowed to live to the end of its incubation period, would likely exhibit clinical signs.

Regarding the age of cattle diagnosed with BSE in Japan, the comment did not contain sufficient information for us to determine and respond to the relevance of the statement to the remainder of the comment.

Issue: One commenter questioned the effectiveness of APHIS' use of United Kingdom surveillance numerators to estimate Canada's BSE prevalence. Specifically, the commenter stated that ''Nowhere * * * is incidence reported. Cases (without reference to a population at risk) are used. This may be important because the manner in which BSE cases were counted changed over time in the [United Kingdom].''

Response: We acknowledge that changes over time in BSE surveillance and in the size and demographics of the cattle population do contribute to the uncertainty about the efficacy of the initial, ruminant-to-ruminant feed ban introduced in the United Kingdom in 1998. However, the United Kingdom's Department for Environment, Food, and

Rural Affairs (DEFRA) does not report BSE surveillance results by birth year and surveillance class (e.g., active or passive surveillance, animal health status). Ideally, such data could be entered into BSurvE or a similar model to estimate true BSE prevalence for all United Kingdom birth year cohorts since the onset of the epidemic. This process would permit not only an improved estimate of the effect of the initial feed ban but also of the incremental impact of additional measures that were subsequently introduced. DEFRA has reported back-calculation model estimates of true BSE prevalence in cohorts born after 1995 to assess the effects of the ''reinforced feed ban'' introduced by the United Kingdom in August 1996 (DEFRA 2005, 2006b). However, we are unaware of any published estimates of true BSE prevalence in the United Kingdom for the 1987–1995 birth year cohorts based on up-to-date surveillance results.

Issue: One commenter stated that APHIS is wrong to assume that the United Kingdom data regarding the effectiveness of the feed ban can be applied directly to the situation in Canada.

Response: We acknowledge that the applicability to Canada of the data from the initial United Kingdom ruminant-to-ruminant feed ban is uncertain. Nonetheless, the United Kingdom's experience and data are important and useful to our risk assessment and analyses. In addition, the Peer Review Report (RTI 2007, p. ES–2) noted that ''[all reviewers] agreed that the evidence from the United Kingdom * * * and Europe that the feed ban is effective is reasonable to consider in the case of Canada.''

Issue: Several commenters noted the differences in the feed bans in the United Kingdom and Canada in stating that it is not valid to draw conclusions about the likely prevalence of BSE in Canada by extrapolating from the rate of decline in BSE cases in the United Kingdom following implementation of a feed ban there. The commenters noted that (until expanded this July) the feed ban in Canada prohibited the feeding of ruminant material to ruminants. In contrast, said one commenter, significant declines in the number of confirmed BSE cases in the United Kingdom did not occur until the United Kingdom took stronger measures, ultimately banning the feeding of all mammalian protein to food animals in 2001. The commenter suggested that the United Kingdom's experience in particular clearly shows that ruminant-to-ruminant feed bans do not drastically curtail the number of confirmed BSE cases and that much stronger measures are needed to eradicate the disease.

Response: The comments appear to confuse the absolute level of BSE in the United Kingdom with its rate of decline. The comments also ignore the BSE incubation period and the effects of other concurrent measures, trends, and events in the United Kingdom. The number of BSE cases in United Kingdom birth year cohorts (all cattle born in a given year) has continued to decline since peaking in 1987. With the exception of the 1996 birth year cohort, it is not readily apparent that there has been any significant change in the rate of decline in birth year cohort prevalence after the United Kingdom introduced the initial ruminant-to-ruminant feed ban in 1988 (figure 2). As of March 1, 2007, the United Kingdom had confirmed two BSE cases in animals born after 2001, but due to the long BSE incubation period, it is reasonable to expect that ongoing surveillance may detect additional cases in animals born after 1998.

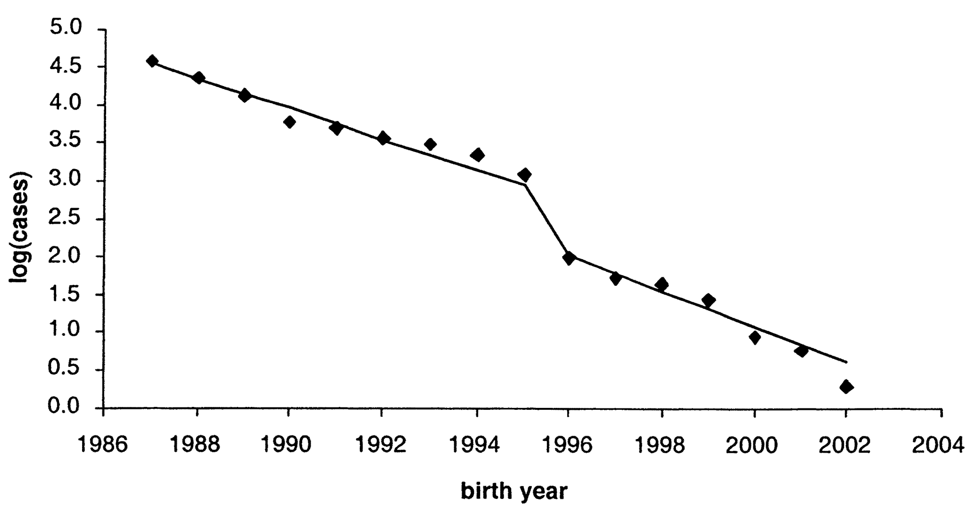
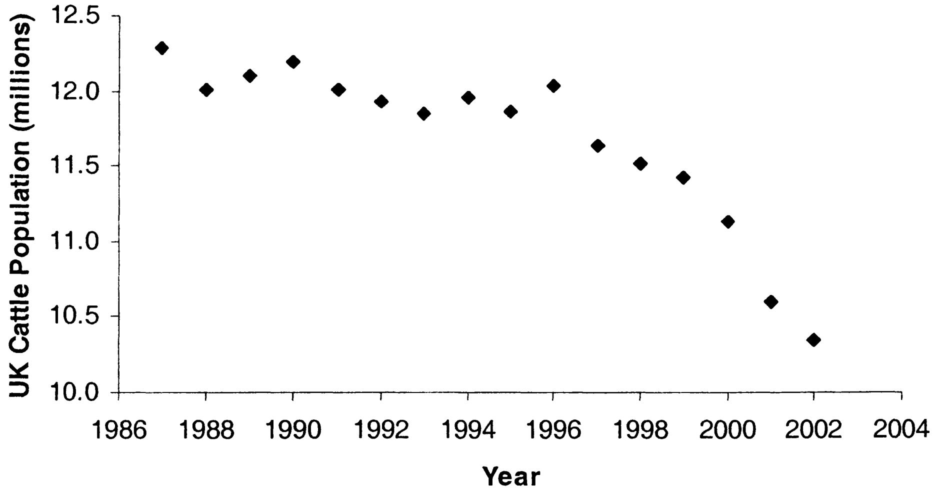


Figure 2.--Reduction in BSE cases in the United Kingdom by birth year, 1987-2002.

Source: DEFRA 2007a.

Shortly after the emergence of vCJD was publicly recognized in March 1996, the United Kingdom introduced several BSE-related measures, including the ban on the use of mammalian MBM in feed for all farm animals (the ''reinforced feed ban''), a selective cull, and the over-30-month rule limiting the age of animals that could be slaughtered for food. As shown in figure 3, the size of the United Kingdom cattle population began a marked decline in 1996, punctuated by a drop associated with the foot and mouth disease (FMD) outbreak in 2001.

Figure 3.--United Kingdom Cattle Population, 1987-2002



Source: DEFRA (2007b).

In addition to the declining cattle population size, other confounding variables, such as changes in cattle population demographics and BSE surveillance practices, make it difficult to ascertain the independent or marginal effect of any single measure on the decline of BSE in United Kingdom birth year cohorts. At this time, it appears that the confluence of events and measures of 1996 may have hastened the waning of BSE in the United Kingdom, but the decline was underway in 1988.

Issue: One commenter indicated that scientific studies in France and Britain have found that, after a ruminant-to-ruminant feed ban was put into place, the subsequent incidence of BSE was correlated to pig density, and that the new Canadian BSE feed rule, to be implemented in July 2007, is, according to the commenter, similar to, but weaker than, the September 1990 United Kingdom SBO [Specified Bovine Offals] ban. The commenter stated that, by not following the lead of the United Kingdom [and banning the feeding of all mammalian protein to food animals], the proposed CFIA SRM ban may reduce but will not eliminate the risk of BSE in Canada.

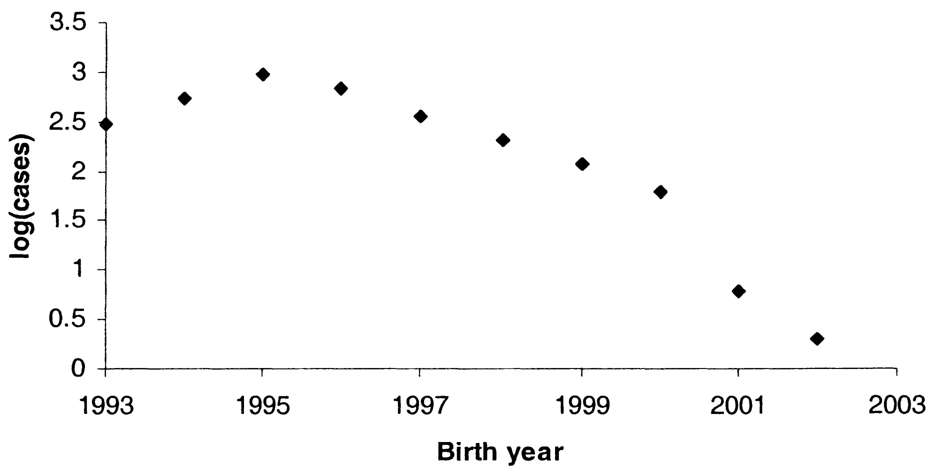
Response: Two studies—Abrial *et al.* (2005) and Stevenson *et al.* (2005)—indicate a correlation between cases of BSE born after a ruminant-to-ruminant feed ban was implemented and areas of higher pig density in France and Britain. These studies indicate the potential for cross-contamination of livestock feeds after ruminant-derived protein was excluded from ruminant feed. Eventually, each country and the EU adopted regulations prohibiting the inclusion of any animal protein in livestock feed. At this time, however, it is not possible to ascertain the extent, if any, to which establishment of a more restrictive feed ban had any impact on the rate of BSE decline in EU Member States beyond the feed controls already in effect.

As discussed previously, the number of BSE cases in United Kingdom birth year cohorts began to decline in 1988, the year the initial ruminant-to-ruminant feed ban was introduced. Although France initially introduced a ban on mammalian MBM in cattle feed in July 1990—not a ruminant-to-ruminant feed ban—the European Commission Scientific Steering Committee concluded that the French feed ban adopted in 1990 ''was likely not effectively enforced until 1994/1995.'' (ECSSC 2000, p. 30). Based on testing in 2001–2002, Bonnardiere *et al.* (2004) found a significant increase in French BSE prevalence between the July 1993–June 1994 and July 1994–June 1995 cohorts, followed by a significant decrease in BSE prevalence in birth cohorts born in France after June 1995. More recently, active surveillance during 2001–2005 also indicates that the number of BSE cases per cohort peaked in France in the 1995 birth year cohort and declined thereafter (EC 2006, table B20).

In Europe more generally, based on active surveillance during 2001–2005, the number of BSE cases per birth year cohort in the original EU Member States (EU 15), excluding the United Kingdom, was on the decline after the 1995 birth year cohort. In June 1994, the EU banned the feeding of mammalian MBM to ruminants. However, among EU members, only Belgium, Germany, Greece, Italy, Luxembourg, and Spain had no feed ban in place prior to the 1994 EU-wide measure (Court of Auditors 2001). In June 2005, the European Commission issued the ''Report on the Monitoring and Testing of Ruminants for the Presence of Transmissible Spongiform Encephalopathy in the EU in 2004'' and observed that the impact of the 2001 ''total feed ban'' (EU Regulation 999/2001) cannot yet be assessed due to the long BSE incubation period. As noted in the discussion of the decline of BSE in the United Kingdom, it is reasonable to expect that ongoing surveillance may detect additional cases in animals born after 1998.

The conclusion of our risk assessment that, over the 20 years of the analysis, the risk to the United States (i.e., the likelihood of establishment and the potential impacts of cases that may occur even without establishment of BSE) as a result of importing from Canada the bovine commodities considered in this rule is negligible, is not predicated on the eradication of BSE in Canada.

Figure 4.--Year of birth distribution in BSE cases detected in the EU-15 (excluding United Kingdom) during 2001-2005



Source: EC (2006, table B20).

Issue: One commenter indicated that year-of-birth data collected by the EU shows that, based on the number of BSE cases detected in the United Kingdom since 2001, there was a steady increase in the number of BSE-positive cattle born in the United Kingdom after its 1988 feed ban, beginning with cattle born in the year 1990.

Response: We disagree with the commenter. Since July 2001, when the EU-wide active BSE surveillance program commenced, an increasing proportion of the total BSE cases in the United Kingdom have been detected as a result of targeted (active) surveillance (DEFRA 2006b, figure 4.3). However, as shown by the EC (EC 2006, chart B1), the vast majority of BSE cases in the United Kingdom were detected by surveillance prior to 2001. Based on all available United Kingdom BSE surveillance data (DEFRA 2007), the number of BSE cases in United Kingdom birth year cohorts began to decline in 1988, the year the initial ruminant-to-ruminant feed ban was introduced.

For the reasons discussed above, we continue to consider it appropriate to apply our estimates of BSE prevalence in Canada to our risk assessment. As noted above, we used two related, but distinct, methods to estimate BSE prevalence in Canada, and addressed the uncertainty in the prevalence of BSE in Canada by considering prevalence estimates that differ by more than a factor of five. Although we consider the BSurvE Prevalence B estimate to be far more likely to be true than is the BBC estimate for the current standing Canadian cattle population, we consider the result of the BBC model as the more likely prevalence estimate to apply to the assessment of BSE risks associated with imports from Canada over the next 20 years.

Feed Ban in Canada

As discussed above, in our January 2007 proposed rule, we proposed to allow the importation of live bovines from BSE minimal-risk regions if the animals were born on or after a date determined by APHIS to be the date on and after which a ruminant-to-ruminant feed ban in the region of export has been effectively enforced. We noted that experience around the world in countries with BSE has demonstrated that feed bans are effective control measures, and that the incidence of BSE worldwide continues to decline because of these measures (OIE 2007a).

We indicated that, because of the demonstrated efficacy of an effectively enforced feed ban in reducing the possibility of exposure of cattle to the BSE agent, the OIE provides guidelines for trade in live cattle from regions that have reported BSE if such regions have an effective feed ban in place, provided the cattle were born after the date when the feed ban was effectively enforced (OIE *Terrestrial Animal Health Code*, Chapter 2.3.13). We proposed to consider March 1, 1999, as the date on and after which a feed ban has been effectively enforced in Canada. A number of commenters addressed Canadian enforcement of its feed ban, and also addressed the date we proposed to consider as the date of effective enforcement of a feed ban in Canada. Although some commenters specifically supported March 1, 1999, as the date of effective enforcement of a ruminant-to-ruminant feed ban in Canada, a number of other commenters disagreed that Canada was effectively enforcing a feed ban as of that date. Some commenters suggested alternative dates or time frames.

Issue: Several commenters stated that APHIS' determinations of the level of compliance with the Canadian feed ban and the time at which compliance was achieved are arbitrary and scientifically indeterminable.

Response: We disagree with the commenters. In January 2005, USDA sent a team to Canada to assess Canada's feed ban and its feed inspection program to determine whether the control measures put in place by the Canadian Government were achieving compliance with that country's regulations. APHIS conducted an extensive review of the feed ban in Canada. As part of its review, APHIS analyzed CFIA's description of past cases of BSE in Canada, as well as historical inspection and compliance data related to the feed ban for the previous 3 years, educational materials, published notices, and the report of the International Review Team that was submitted to the U.S. Secretary of Agriculture in February 2004. Additionally, the U.S. team accompanied the CFIA inspection staff on inspections of randomly selected commercial feed mills and rendering facilities. At the facilities, the U.S. team observed the application of the inspection standards, observed manufacturing techniques, and discussed processes with facility personnel involved in various steps of feed manufacturing. In its report, the team concluded that Canada has a robust inspection program, that overall compliance with the feed ban in Canada is good, and that the feed ban is reducing the risk of transmission of BSE in the Canadian cattle population (USDA 2005). The team's findings support our conclusions regarding the level of compliance with the feed ban in Canada.

Issue: In our January 2007 proposed rule, in discussing our rationale for considering March 1, 1999, to be the date of effective enforcement of a feed ban in Canada, we stated that a 12-month period would generally be sufficient to allow purchased feed products that may contain MBM to be completely used. One commenter expressed uncertainty about that estimation and suggested that it might be advisable for APHIS to conduct a quantitative assessment of compliance with the feed ban to determine the date of its effective enforcement.

Response: We recognize uncertainty regarding the precise date on which Canada achieved effective enforcement of its feed ban, but we note that, given the extremely low prevalence of BSE in Canada along with the safeguards in the United States, the impact on the overall risk of a slightly earlier or later date would be minimal. Although reducing uncertainty can, at times, be achieved by performing more rigorous quantitative analyses, before attempting to reduce the uncertainty regarding any given factor or parameter—such as the precise date on which Canada achieved effective enforcement of its feed ban—it is important to examine the significance of the parameter to the overall risk result.

Issue: Several commenters stated that APHIS' calculation of the amount of time necessary for ruminant feed to cycle through the Canadian feeding system is irrelevant in the absence of effective enforcement of feed-ban regulations in Canada. The commenters stated that it was not until between 2000 and 2002 that Canada implemented inspections of feed and rendering facilities.

Response: The commenters' statement is not accurate. Inspections of rendering facilities and feed mills in Canada began immediately with the implementation of the feed ban in that country in August 1997. Rendering facilities were required to obtain an annual permit to operate, and issuance of a permit required an inspection of the facility. In addition, CFIA immediately began a program for inspection of commercial feed mills. All commercial feed mills were inspected in the first year after the implementation of the feed ban, with none of the feed mills found to be including prohibited material in ruminant feed. Thereafter, feed mills were on a 3-year inspection interval until 2002, when annual inspection of commercial feed mills was initiated.

Issue: A number of commenters stated that the diagnosis of BSE in cattle born after the establishment of a feed ban in Canada demonstrates that Canada's feed ban is either ineffective or not effectively enforced.

Response: We disagree with the commenters' conclusion. The commenters suggest that, in order for the Canadian feed ban to be considered effective, BSE surveillance data would have to demonstrate that the likelihood of BSE transmission in that country has been eliminated. However, as noted in our risk assessment, Canadian BSE surveillance data do not provide a statistical basis for distinguishing BSE prevalence among birth year cohorts (APHIS 2006b, p. 12); the overall prevalence is so low that distinguishing any difference is nearly impossible. In other words, the data cannot distinguish any significant difference in prevalence among animals born in different years, which would have been one way to demonstrate the effect of a feed ban (e.g., if the feed ban were implemented at the beginning of 1997, surveillance data showing a higher BSE prevalence in animals born in 1996 than in animals born in 1997 would support the effectiveness of the feed ban). However, in the absence of a feed ban that reduced exposure to BSE, we would expect the prevalence of the disease to increase over time. We have no evidence that such an increase has occurred, but we do have data that the feed ban is being enforced.

Furthermore, as we discussed in our risk assessment, detection of BSE in an animal born after the date a feed ban was implemented does not indicate an overall failure of the measures in place to stem transmission of the disease in that country. Most other countries that have experienced cases of BSE, have reported similar cases. Of 25 countries that have reported indigenous BSE cases, only 4 reported no cases in 2005–06 (OIE 2007). Human error is expected, which is why the feed ban is comprised of a number of interrelated measures that have a cumulative effect. Our risk assessment does not assume 100 percent compliance with all measures all of the time. We discussed factors related to the feed ban in Canada since before its implementation in 1997. We considered activities related to inspection and compliance with the feed ban, the rendering industry, the risk of cross-contamination, education activities and industry awareness, and on-farm practices that might contribute to the efficacy of the feed ban. In addition, we highlighted the fact that since the implementation of the feed ban on August 4, 1997, CFIA has continued to revise and strengthen its processes and procedures to further enhance the effectiveness of the feed ban. Canada's July 2007 modification of its feed ban to remove SRMs from all animal feeds, pet food, and fertilizer is a good example of such enhancements. We concluded that compliance with the feed ban measures in Canada continues to increase as the program evolves and that all of these factors have resulted in a cumulative reduction in the risk that Canadian cattle will be exposed to the BSE agent.

Issue: Several commenters stated that Canada cannot demonstrate that it has effectively prevented the feeding of ruminant material to cattle over the past 8 years. Commenters stated that eight or nine Canadian feedlots were discovered to still be feeding banned bone meal products, and that, because of their violations of the feed ban, 30,000 Canadian cattle were under quarantine. Additionally, one commenter stated that in March 2007, nine farms in Saskatchewan and as many as 8,000 cattle, deer, and other ruminants were quarantined after ruminant MBM was accidentally shipped to those farms from a Saskatoon feed mill. Another commenter stated that, in December 2006, Canada's Minister of Agriculture and Agri-Food acknowledged that up to 10,000 head of Canadian cattle on 113 different farms in the Provinces of Ottawa and Quebec had recently been fed feed contaminated with ruminant material.

Response: APHIS is aware of the incidents reported in late 2006 and in March 2007 and considered such incidences very carefully in its evaluation of the effectiveness of the feed ban. However, it is not clear to us what the commenters are referring to regarding 30,000 Canadian cattle under quarantine.

It should be noted that the use of the term ''contaminated'' above refers to the potential inclusion in ruminant feed of MBM derived from ruminants, but not to the feeding of known BSE-contaminated material to ruminants. Feed control systems, including those in the United States, are inherently subject to human error such as occurred in these incidents. These compliance errors require follow up and correction by CFIA, just as in the United States such incidents would necessitate follow-up by the U.S. Human Health and Services, Food and Drug Administration (FDA). Following detection of these occurrences, CFIA conducted a detailed investigation and traced all potentially contaminated feed. CFIA accounted for and disposed of all feed that did not enter the distribution channels, and feed already distributed to farms was removed, disposed of, and replaced. CFIA conducted risk assessments to help evaluate the possibility that new cases of BSE would occur due to the contamination of feed with prohibited material, and concluded that the overall risk was negligible. Even though this finding indicated that it was highly unlikely that animals exposed to the involved feed would develop BSE in the coming years, in those instances where exposure to the feed could not be ruled out, the CFIA has excluded these animals and their meat and byproducts from export eligibility. This measure was established to meet the technical requirements of various trading partners and does not affect the movement or marketing of these animals within Canada. These findings, together with Canada's rapid and comprehensive response to the incidents, reinforces our confidence in the effective enforcement of Canada's ruminant feed ban.[7]

Issue: Some commenters questioned the effectiveness of Canada's feed ban, given evidence of contamination of ruminant feed with MBM derived from ruminants. One commenter stated that, in the five cases of cattle born after March 1, 1999, where investigations of BSE in Canadian cattle have been completed, the reported cause of BSE infectivity centered on ruminant MBM used in non-ruminant feeds cross-contaminating ruminant feeds, either during processing at the feed mill or during transport. Given that four animals were born after March 1, 1999, the commenters indicated that great care must be given to the analysis of these animals in the risk assessment and did not feel that APHIS thoroughly examined the cases.

Response: We agree with the commenters that the investigations of BSE in animals born in Canada in 2000 and 2002 suggest that these animals were most likely exposed during their first year of life to feed contaminated during processing (CFIA 2006a). Reports of the investigations identified incidents of concern in which ruminant feed was processed or transported immediately following the handling of nonruminant feed containing prohibited material. Such incidents were in contravention of Canadian regulations, which require flushing and/or clean-out between batches if ruminant feed is processed on the same lines as feed containing prohibited material.

We considered the issue of cross-contamination and concluded that Canada has implemented measures to prevent cross-contamination of ruminant feed with prohibited materials in the rendering and feed manufacturing industries are essential for implementation of an effective feed ban. We also considered other factors—including the regulatory actions taken to implement the feed ban, education and industry awareness efforts, inspection and compliance activities, and on-farm feeding practices—in our overall evaluation to determine the date the feed ban was effectively enforced in Canada and, based on those factors, identified March 1, 1999 as the date of effective enforcement of the feed ban.

APHIS did not specifically address each individual case of BSE in Canada in the risk assessment, as the available details of each epidemiological investigation did not contribute to the overall risk estimation. The risk estimation was based on consideration of all factors relevant in the risk pathway. These included consideration of the current Canadian feed ban, with explicit recognition that cases born after the feed ban was implemented in August 1997, or after the March 1, 1999 date have occurred and could continue to occur. The prevalence estimate acknowledges that BSE is present in Canada, albeit at a very low level. The risk reduction factors in the United States, including feed ban regulatory activities similar to those in Canada, were considered in the exposure assessment. The combination of all of these factors, including recognition that human error can occur in any step of the pathway, supported the conclusion that the risk to the United States of BSE—i.e, the likelihood of establishment and the potential impact of cases that may occur even without establishment—as a result of importing from Canada the bovine commodities considered in this rule is negligible.

Issue: One commenter stated that Canada has experienced an increase in the number of BSE cases since it instituted a feed ban in 1997.

Response: It appears that the commenter is equating the number of detected cases of BSE with the number of infected animals in a national herd. However, an increased number of detections of BSE does not necessarily mean an increase in prevalence. A BSE detection rate is dependent not only on prevalence, but also on intensity of surveillance. An increased number of BSE cases have been detected in Canada as that country has increased surveillance for the disease. As noted above, an APHIS analysis of the Canadian BSE surveillance data did not find a statistical basis for distinguishing BSE prevalence among birth year cohorts.

Issue: A number of commenters referred to the number of BSE cases in cattle born in Canada after March 1, 1999, as evidence that the date should not be accepted as the date of an effectively enforced feed ban. Commenters requested that APHIS reassess the proposed rule in light of recent diagnoses of such cattle.

Response: In the assessment of potential BSE risk we conducted for this rulemaking, we concluded that there is an extremely low likelihood that cattle born in Canada on or after March 1, 1999, will have been exposed to BSE. This conclusion does not mean that effective enforcement necessarily equals no instances of contravention of the feed ban, either accidentally or intentionally, just as isolated transgressions of U.S. laws do not necessarily constitute ineffective enforcement of those laws.

While specific incidents of cross-contamination can, and most likely will, happen, since no regulatory effort can ensure 100 percent compliance, the detection of BSE in several bovines in Canada born after March 1, 1999 does not negate the overall effect of the feed ban in decreasing the opportunities for transmission of disease. Empirical evidence from the United Kingdom has demonstrated, and simulation studies have reinforced, that implementation of a ruminant-to-ruminant feed ban leads to continued decrease in prevalence over time (Cohen, *et al.*, 2001; 2003; DEFRA 2006, EC 2003; 2005). Similar

[7] In the rulemaking for our 2005 final rule establishing criteria for recognition of a region as a BSE minimal-risk region, we discussed in detail our evaluation of Canada's veterinary infrastructure; disease history; practices for preventing widespread introduction, exposure, and/or establishment of BSE; and measures taken following detection of the disease (APHIS 2005).

effects of a feed ban have been seen in other countries in the EU, where there have been continued detections of BSE in cattle born after a feed ban is initially implemented. At the same time, however, the apparent number of cases of BSE identified in the EU–15 Member States has decreased every year since 2001. The available evidence leads firmly to the conclusion that animals born after the date of implementation of a ruminant-to-ruminant feed ban are far less likely to be exposed to the BSE agent (Heim and Kihm, 2003).

Issue: A number of commenters recommended various alternative dates or timeframes for consideration as the date of effective enforcement of a feed ban in Canada. Most of the commenters who recommended an alternative date expressed concern regarding the detection of BSE in bovines born in Canada after March 1, 1999.

The recommended alternative dates or timeframes included the following: July 1, 2007; the date of birth of the youngest bovine in Canada that has been determined to be BSE-positive; May 1, 2002; 5 to 7 years after the most recently diagnosed case of BSE in Canada; whenever Canada can verify 100 percent compliance with its ruminant-to-ruminant feed ban; a staggered system of dates that would increase the allowable age of bovines intended for importation from Canada as time progressed with no additional diagnoses of BSE in Canada.

Some of the commenters who suggested July 2007 as the date of effective enforcement based their recommendation on the fact that on July 12, 2007, Canada expanded its feed ban to prohibit the inclusion of SRMs in any animal feeds, pet foods, or fertilizers. One commenter asked how APHIS can be satisfied that the United States would be importing a safe product if Canada itself was not satisfied with the safeguards in place at the time the proposed rule was published, and subsequently took additional measures to strengthen its feed ban. A number of commenters recommended that the provisions of the proposed rule not be implemented until Canada bans all feeding of animal material to food animals. One commenter stated that July 2007 would be an appropriate point to begin the importation of breeding animals that have had exposure to processed animal feed, and that March 1, 1999 would be an acceptable date for bovines that have not been exposed to processed animal feeds—such as bison maintained by Parks Canada.

Several commenters, who expressed no animal health concerns with identifying March 1, 1999 as the date of effective enforcement of a feed ban in Canada, recommended that APHIS consider harmonizing the date chosen with the date Canada has identified as the effective date of a ruminant-to-ruminant feed ban in the United States, January 1, 1999.

Response: In prior rulemaking (APHIS 2005), we evaluated evidence (regulations in place based on statutory authority, adequate infrastructure to implement the regulations, and evidence of implementation and monitoring) in making the determination that compliance with the feed ban in Canada is good and concluded that the feed ban was effectively enforced. In our process of identifying the date of effective enforcement of a ruminant-to-ruminant feed ban in Canada, we considered Canada's implementation guidance and policies. For example, we considered the allowance of grace periods for certain aspects of the industry, in determining the practical implementation period for the feed regulations. Then we considered a sufficient time period subsequent to this implementation period to allow most feed products to cycle through the system, given the management practices in the country. We concluded, based on the above evaluations, that cattle born in Canada on or after March 1, 1999, can be imported into the United States with an extremely low likelihood that they have been exposed to the BSE agent.

As noted, a number of commenters recommended that APHIS consider July 2007, when Canada expanded its feed ban, as the date of effective enforcement of the Canadian feed ban. We consider the July 2007 expansion of the Canadian feed ban to be an enhancement of an already effective ban. CFIA, in explaining its rationale for the enhanced ban, emphasizes that, although surveillance results and investigations of BSE cases indicate that the feed ban in Canada has effectively reduced the spread of BSE since being implemented in 1997, even compliance with the ban's requirements left limited opportunities for contamination during manufacture, transportation, and storage that CFIA considered worth eliminating. In addition, the accidental misuse of feed on farms with multiple species could not be discounted. With the enhanced ban, CFIA projects that the eradication of BSE in Canada will be accelerated. Following such a regulatory path does not indicate that the feed ban in Canada prior to July 2007 was not effective or effectively enforced.

With regard to the recommendation that the date of effective enforcement of the Canadian feed ban be identified as the date of birth of the youngest bovine in Canada that has been determined to be BSE-positive, we do not consider such a change to be necessary or justified. The risk assessment we conducted for this rulemaking acknowledged that BSE exists in Canada and that there would likely be additional cases detected. March 1, 1999 was never intended to be an absolute cut-off point after which no new cases of BSE would be acceptable. The risk assessment concluded that, despite the likelihood of additional diagnoses of BSE in Canadian cattle, the proposed amendments would pose negligible risk to animal health and food safety in the United States. If an infected cow were to be imported into the United States, a series of strong safeguards would have to fail—in sequence—for that animal to pose any risk.

With regard to the recommendation that APHIS harmonize its identification of the effective enforcement date of a Canadian feed ban with the date identified by Canada as the date of effective enforcement in the United States, we do not agree that such a change would be appropriate or necessary. APHIS arrived at the March 1, 1999 date for effective enforcement of the feed ban in Canada by considering not only the date the feed ban was established in that country but also information provided by Canada regarding its implementation timetable, as well as feeding practices in that country. It does not necessarily follow that implementation events in the United States followed precisely the same track as those in Canada.

Issue: In our January 2007 proposed rule, we discussed the diagnosis of BSE in cattle in Canada born after March 1, 1999, and stated that "such isolated incidents are not epidemiologically significant and do not contribute to further spread of BSE, especially when considered in light of the entire risk pathway and its attendant risk mitigations."

Several commenters took issue with APHIS' description of the cases as "isolated." Some commenters stated that "isolated" implies a solitary or separated condition, which cannot be said of the BSE cases recently confirmed in Canada. Further, other commenters stated the cases are linked by a trend in geographic location, with the last three cases occurring in the Province of Alberta. One commenter stated that of the nine cases of BSE detected in Canada, four occurred in cattle born after March 1, 1999, and that four of nine cases—or 44 percent—do not represent isolated cases and strongly disagreed that this date corresponds to when Canada's feed ban became effectively enforced.

Response: We disagree with the comments, although we acknowledge that the term ''isolated'' could be interpreted in several ways. The use of the term in our proposed rule was not intended to imply that the cases were ''solitary or separated.'' Our use of the term ''isolated'' was intended to characterize the cases as being small in number and not indicative of a systemic failure of the feed ban in Canada, but rather the result of individual instances of error in contravention of the feed ban (*e.g.*, inadequate cleaning between handling of feed for non-ruminants and feed for ruminants).

For the reasons discussed above, we consider our determination that March 1, 1999 be deemed the date of effective enforcement of the feed ban in Canada to be reasonable, grounded firmly in the regulatory basis and operations of the ban in Canada, and entirely consistent with the science and with OIE guidelines. Accordingly, we are making no changes based on the comments.

Likelihood of Exposure of Cattle in the United States to BSE

The assessment is designed to estimate the likelihood of each of the multiple steps. Although we analyzed the likelihood of each individual step in the process occurring, we interpreted its significance in the context of the entire process.

As part of the risk assessment we conducted for our January 2007 proposed rule, we evaluated both the likelihood of ''release'' of the BSE agent into the United States and the likelihood of susceptible animals being exposed, given such release. We evaluated the pathways by which infected Canadian cattle, if imported, might expose U.S. cattle to BSE, and the likelihood that these pathways might lead to the establishment of the disease in the U.S. cattle population.

Several steps must take place for BSE to be transmitted to cattle in the United States from a bovine imported live from another country. A BSE-infected bovine must be imported into the United States; the infected bovine must die or be slaughtered; tissues from that animal that contain the infectious agent must be sent to a rendering facility; the infectivity present in these tissues must survive inactivation in the rendering process; the resulting meat-and-bone meal (MBM) containing the abnormal prion protein must be incorporated into feed; and this feed must be fed to cattle at a level adequate to infect the cattle. (The amount of infectious material required in feed for cattle to become infected is dependent on the age of the cattle; younger cattle are more susceptible to BSE and require less BSE-contaminated feed to become infected (Arnold and Wilesmith, 2004). We indicated in our risk assessment that the nature and likelihood of these pathways depend in large part on mitigations acting in series and in parallel that reduce the likelihood that BSE will be established in the United States.

A number of commenters addressed the issues of the likelihood of release of the BSE agent into the United States and the likelihood of exposure of U.S. cattle to BSE due to the importation of bovines from Canada. In general, the commenters said that we had underestimated the likelihood of release and/or exposure, or questioned one or more elements of our assessment.

Issue: One commenter, whose statements were referenced and supported by a second commenter, discussed the geographic distribution of BSE cases in Canada and expressed concern that Canada's experience demonstrates that certain locations in the United States might be more susceptible to BSE establishment than others. The commenter stated that events in Canada indicate that an average risk estimate is meaningless for BSE and demonstrates how ''hot spots'' (*i.e.*, locations that are more susceptible to spread of disease and, therefore, that have a localized higher BSE prevalence) allow BSE to propagate and spread. The commenter stated that the model-based predictions in APHIS' risk assessment are useless because the models do not account for geographic and other sources of heterogeneity and pointed to Alberta as a BSE hot spot. Further, the commenter indicated that the APHIS risk assessment has not provided any real data or relevant analyses related to BSE hot spot development and that APHIS has not quantified the risks that imports will create localized BSE hot spots in the United States. The commenter calculated that, if 5 percent of U.S. locations are potential hot spots, and 1 million animals are imported each year with six of them BSE-positive, the expected probability of at least one hot spot being activated in the United States is at least 77.7 percent.

Response: We disagree with the commenters. The available evidence provides no basis for distinguishing BSE prevalence among Canadian provinces. The commenter who singled out Alberta provides no analysis to support the hypothesis that the BSE prevalence in Alberta is higher than in other provinces. Through May 2007, reported BSE cases have originated in three western Provinces: Alberta (8 cases), British Columbia (2 cases), and Manitoba (1 case). No cases have been reported through May 2007 in the eastern Provinces. Intuition might suggest that the BSE prevalence is higher in Alberta. However, Alberta contains approximately 40 percent of the Canadian cattle herd. Other factors being equal, BSE is more likely to be detected in regions with large cattle populations.

Apart from the detected cases, geographically disaggregated data on BSE surveillance and Canadian cattle population demographics are not available. However, assuming that the total BSurvE points accumulated through August 15, 2006 (APHIS 2006c, table 4) were collected proportionally to the cattle population size in each province, table 3 presents the allocation of the random sample size equivalents (BSurvE points).

TABLE 3.—ALLOCATION OF BSURVE POINTS AMONG PROVINCES PROPORTIONAL TO HERD SIZE

Province	Cattle (000)*	Percent	BSurvE points	BSE cases**
Alberta	6,300.0	38.8	594,858.4	7
Manitoba	1,720.0	10.6	162,405.8	1
British Columbia	830.0	5.1	78,370.2	1
Saskatchewan	3,450.0	21.2	325,755.8	0+
Ontario	2,203.9	13.6	208,096.6	0
Quebec	1,455.0	9.0	137,384.0	0
Nova Scotia	107.0	0.7	10,103.2	0
New Brunswick	90.5	0.6	8,545.2	0
Prince Edward Island	84.5	0.5	7,978.7	0
Newfoundland	9.1	0.1	....	....

TABLE 3.—ALLOCATION OF BSURVE POINTS AMONG PROVINCES PROPORTIONAL TO HERD SIZE—Continued

Province	Cattle (000)*	Percent	BSurvE points	BSE cases**
Labrador			859.2	
Total	16,250.0		1,534,357	9

*Source: Statistics Canada (2007).
**BSE cases reported through August 2006 were included in APHIS (2006c).
+The BSE case confirmed in May 2003 was born in Saskatchewan but reported in Alberta.

Based on this allocation of evidence, a binomial likelihood ratio test (Fleiss *et al.*, 2003) fails to reject the hypothesis that the provinces have the same BSE prevalence. That is, the result provides no basis for concluding that BSE prevalence varies among provinces. Depending on the method used to estimate provincial BSE prevalence, the test indicates that 11 to 20 BSE cases would have to have been observed in Alberta (or 4 to 7 cases in British Columbia) before rejection of the hypothesis.

The commenters provide no data or analysis related to BSE hot-spot development. APHIS' risk assessment discusses the apparent geographic clustering of Canadian BSE cases reported through August 2006 in three western provinces: Alberta, British Columbia, and Manitoba (APHIS 2006b, pp. 12–13). (In addition, the May 2003 case reported in Alberta was born in Saskatchewan.) However, APHIS also noted that the Manitoba BSE case was phenotypically different than the previously detected BSE cases of Canadian origin (APHIS 2006b). In addition, in its risk assessment, APHIS considered the CFIA report (CFIA 2006) that discusses geographic and temporal BSE clustering theories. APHIS concluded that the detection of further clusters (*i.e.*, linked cases) that might be defined in the future cannot be ruled out and did not assume that any Canadian provinces are BSE-free. While BSE case investigations may reveal associations among individual cases, such as a common feed source, the question of clustering is scale dependent. At a local scale, there may be associations between individual cases, but at a regional or national scale, the clusters themselves may be geographically dispersed. In addition, the geographic disease dispersal pattern may change over time due to the movement of cattle.

Further, the commenter provides no evidence or analysis to support the hypothesized sources of heterogeneity. On the contrary, disaggregating the available surveillance data into numerous strata to account for hypothetical sources of heterogeneity (geography, market class, etc.) generates substantial uncertainty within strata by diluting the sample size. One consequence of this practice (commonly called over-stratification) would be to inflate the upper confidence level risk estimates within putative strata (e.g., Alberta beef cattle).

With regard to quantifying the likelihood of imports creating localized hot spots in the United States, the commenter provides no data or analysis, and cites no existing scientific literature, in support of the hypothesis that some U.S. cattle-producing areas are—on average—more susceptible than others to the establishment of BSE. While such spatial heterogeneity is theoretically plausible, APHIS is unaware of any empirical data that would provide a statistical basis for distinguishing BSE susceptibility among U.S. cattle-producing locations. Although the commenter claims that the APHIS analysis represents an average risk estimate, the assessment does consider random variability on the national scale in the BSE reproductive rate (R_0) and the number of infected animals under each scenario or set of assumptions (APHIS 2006b). In essence, the commenter argues for a more disaggregated risk model that has random variability at the local level (in which regions are assumed to vary significantly from one another) rather than at the national level, but the comment does not provide any evidence in support of the hypothesis that such local differences (spatial heterogeneity) either exist, can be distinguished from a random distribution, or are of sufficient magnitude that they need to be accounted for by the model.

Finally, the commenter's calculation of a 77.7 percent probability of at least one U.S. hot spot being activated rests on two assumptions. First, the commenter assumes that the prevalence of BSE in Canada exceeds the APHIS prevalence estimate by a factor of 10. There is no evidence to support this assumption. Second, the commenter assumes that there is a 5 percent probability that Canadian cattle would be introduced into pockets within the United States where R_0 exceeds unity. (If R_0 exceeds unity (one), the disease will tend to spread. Conversely, if R_0 is less than unity, the number of cases will tend to decline over time, and ultimately the disease will die out.) Other than asserting the existence of such pockets and that 5 percent of U.S. locations may be hot spots, the commenter provides no evidence to support this contention. Even if the comment did provide such evidence, it would have to show that in such pockets the value of R0 substantially exceeds 1 in order for there to be evidence that a substantial impact is likely. For example, if $R_0 = 1.1$ and each generation of the disease (i.e., the time between infection of an animal and that animal's subsequent infection of another animal) lasts just 2 years, it would take 40 years for the disease prevalence to climb from 1 animal to 7. Finally, the commenter's suggestion supposes that no action would be taken to address vulnerabilities in a susceptible pocket if BSE did materialize. This assumption is inconsistent with APHIS' policy and record.

Issue: One commenter asked whether the expected number of imported animals by class (i.e., the intended use of the animal, such as for breeding, immediate slaughter, or feeding and then slaughter) needed to be validated or explored in the sensitivity analysis.

Response: We projected the expected number of imported animals by class because an animal's usage will govern at what age it goes to slaughter. How long a bovine lives will, in turn, have an effect on the animal's likelihood of developing detectable levels of BSE infectivity. The projected numbers of imports by age and use class used in our risk assessment were prepared for APHIS by USDA ERS. These values are based on USDA baseline projections, with specific factors considered based on the regulatory changes proposed. Additional details are provided in Appendix 1 of the Regulatory Impact Analysis and Final Regulatory Flexibility Analysis.

Although these estimates cannot be entirely certain, they are based on the input of experts in the fields of commodity projection and cattle markets iteratively refined with estimates from widely accepted models. Therefore, alternative plausible assumptions for the number of imported animals by class would not likely vary substantially from those based on the most current inputs. Hence, the import projections do not contribute significantly to uncertainty in the total estimated rate at which BSE may be introduced into the United States from Canada. In any case, new economic information based on market forces and age verification described above indicates that, compared to those used in the published risk assessment, the import projections should be revised downwards, especially estimates for the projected number of older cull animals. As a result, any potential release of BSE-infected animals should be lower than previously estimated. In addition, the key determinant of the impact of an introduction of BSE into the United States is its propensity to spread within the cattle herd. The risk assessment results indicate that, because the reproductive constant, R_0, remains consistently less than one, prevalence in the United States will tend to fall over time. (In order for the disease to spread, R_0 must exceed unity (one).)

Issue: One commenter stated that the incidence rate among just the older cattle covered by the proposed rule would be expected to be even higher than the overall incidence for all Canadian cattle slaughtered, thereby making the likely risk even greater.

Response: We are not certain what the commenter is referencing as ''overall incidence for all Canadian cattle slaughtered.'' We note that APHIS estimated the prevalence of BSE in the standing adult cattle population in Canada, not the BSE incidence in all Canadian cattle slaughtered. The Canadian BSE surveillance data provide no statistical basis for concluding that one birth-year cohort has a higher or lower BSE prevalence than another. Therefore, we assumed for our risk assessment that all animals in the current standing Canadian cattle population, including animals 30 months of age and older that are eligible for importation under this rule (as well animals that are not eligible for importation under this rule due to the birth-date requirement) have the same probability of BSE infection. However, it would not be surprising if animals born at an earlier date (i.e., either before or around the time the feed ban was implemented) have a greater likelihood of exposure to contaminated feed, and therefore could have a higher prevalence of BSE than animals born in later years. For this reason, we are restricting imports of live bovines from Canada to those born after the date when the country had an effectively enforced feed ban—which we have determined to be March 1, 1999. Additionally, of the live bovines we project will be imported following the effective date of this rule, greater than 80 percent of the animals are expected to be younger than 2 years of age at the time of importation.[8] Therefore, even if older animals had some significantly higher level of BSE prevalence (which is already reflected in the standing herd estimates), the fact that this rule excludes the importation from Canada of bovines born before March 1, 1999, along with the fact that the large majority of animals are expected to be young, would tend to decrease, rather than increase the overall risk from that which we have estimated.

Issue: One commenter indicated that Canada's BSE prevalence rate essentially guarantees (probability greater than 98 percent) that some BSE-positive cattle will enter the United States. Another commenter suggested that there is a 99.75 percent chance that one or more cattle that would test positive for BSE will be imported into the United States among the first million cattle that would be imported after adoption of the proposed rule.

Response: We note that prevalence refers to the proportion of BSE-infected animals, not the proportion of animals that would test positive for BSE. BSE-infected cattle are unlikely to test positive unless they are tested at a late stage of disease incubation.

Nevertheless, the commenter's estimated likelihood of entry of BSE-infected cattle is consistent with the APHIS risk assessment. The risk assessment clearly acknowledged the possibility of importing infected animals. Given the estimated current prevalence in Canada, table 7 in the risk assessment presents the projections for imports in the first year of implementation, including infected animals.

Issue: One commenter expressed doubt regarding the conclusion reached by the APHIS risk assessment that—because Canada's BSE prevalence will likely decrease over time, and because of the barriers to BSE transmission in the United States—the likelihood of BSE exposure and establishment in the U.S. cattle population as a consequence of the proposed rule is negligible. The commenter stated that the overlapping safeguarding measures described in the risk assessment have not prevented the continued spread of BSE in other countries (including Canada) that have relied on similar measures. The commenter further suggested that the measures have not been empirically tested or validated and cited the four Canadian BSE cases born in the years 2000 and 2002 as evidence that the measures are, in fact, ineffective to either reduce or prevent BSE infection.

Response: We disagree with the commenter's statements. Various data—epidemiological, modeling, and experimental—clearly demonstrate that the barriers discussed in the risk assessment and the proposed rule will decrease the risk of the introduction of BSE and its amplification. These barriers have been used internationally as strategies for the control and prevention of BSE. Furthermore, the barriers have demonstrated a striking effect in curtailing the epidemic and are responsible for the downward pressure on the prevalence of BSE observed in the United Kingdom and Europe. As described in the risk assessment: (1) Slaughter controls prevent the recycling of infectivity into human food and cattle feed; (2) rendering processes contribute to the inactivation of the BSE agent; and (3) feed controls prevent the recycling into cattle feed. In addition, there is epidemiological evidence of an age-related susceptibility to infection, which implies that the animal not only needs to be exposed to the BSE agent to become infected, but needs to be exposed with a sufficient dose at the time in its life that it is susceptible. For disease transmission to occur, the following events must happen in sequence: An infected animal dies or is slaughtered at a sufficiently late point in the incubation period to have significant infectivity present in certain tissues; those tissues go into the rendering system; some level of infectivity remains after the rendering process; the resulting protein is included in feed; and feed is fed to a ruminant in a sufficient amount at an age when it is susceptible. Although this could occur, the likelihood of it happening

[8] As discussed in the regulatory impact analysis APHIS conducted for this rule, most steers and heifers are ready for slaughter between 16 and 24 months of age, feeders are generally ready between 9 and 15 months of age, and vealers and light calves are slaughtered between less than 3 months and 8 months of age. In our analysis, we project that the total number of projected imports from Canada for these three categories of cattle in 2008 will be 987,000. This represents about 88 percent of the overall number of cattle projected to be imported from Canada in 2008. This percentage does not include imported replacement heifers and other breeding stock younger than 2 years of age.

repeatedly is negligible. This fact is demonstrated in the quantitative exposure model used in our risk assessment—i.e., transmission can occur, but it is not sufficient to sustain the disease (R_0 remains far less than one).

We reviewed Canada's feed production process (e.g., regulations in place based on statutory authority, infrastructure to implement the regulations, and compliance with the regulations). We used a peer-reviewed model to estimate the prevalence and determined that the prevalence in Canada is extremely low. We also used a peer-reviewed exposure model in our assessment of the risk (Cohen *et al.*, 2001; 2003). This model takes into consideration several parameter values that are based on experimental and epidemiological information related to BSE. These parameters represent key epidemiological elements related to the mechanisms by which BSE is transmitted. As we indicate in the exposure assessment, that assessment demonstrated that, because we expect Canada's prevalence to decrease over time, and because of the barriers to BSE transmission in the United States, the likelihood of BSE establishment in the U.S. cattle population is negligible. We reach the same conclusion even without assuming a drop in Canada's BSE prevalence over the next 20 years.

Issue: One commenter, in addressing risk mitigation measures in place in the United States, stated that several loopholes remain in the U.S. feed ban through which BSE infectivity could be introduced to cattle, despite recommendations from an APHIS TSE Working Group.

Response: APHIS has proceeded in a thorough and deliberative manner, in cooperation with FSIS and FDA, to determine the steps necessary to continue to protect animal and public health. APHIS has used a peer-reviewed model to assess the likelihood of exposure of cattle to BSE as a result of importing live cattle from Canada under the proposed rule (Cohen *et al.*, 2001; 2003). This model takes into consideration several parameter values relevant to the cattle production process, including what the commenter refers to as loopholes in the feed ban regulations. Even after considering these features of the U.S. system, the results indicate that the likelihood of BSE exposure and establishment in the U.S. cattle population as a consequence of infectivity introduced via imports from Canada is negligible.

Issue: One commenter stated that the models that Canada and the United States used in estimating BSE risk are not validated and have no predictive value. The commenter stated further that the predicted risks from the Harvard model would increase almost 15-fold if compliance is less than assumed in the base case.

Response: We disagree with the commenter's assessment of the quantitative exposure model we used in developing our risk assessment. As noted earlier, the plausibility of the model was established by comparing its predictions for Switzerland against the observed progression of BSE within that country's cattle herd (Cohen *et al.*, 2003). Although the model's performance in the United States has not been empirically evaluated (because there have been too few cases in the United States to do so), the use of models to characterize future risks is well-accepted in the scientific community.

The commenter cites an FSIS risk assessment (Cohen and Gray, 2005), which uses a version of the Harvard model, to argue that, if the misfeeding rate parameter is highly uncertain, the resulting range of results generated by the simulation model is likewise wide. As explained in the APHIS risk assessment, new information indicates that the original range of estimates for the misfeeding rate in the Harvard model as originally developed in 2001 were overly pessimistic. APHIS obtained new data and, using these new data in the Harvard model, reduced the range of the original estimates. Therefore, in APHIS' evaluation, the impact of misfeeding on the output of the model is much more modest.

Issue: One commenter asserted that APHIS' risk assessment model predicts low or ''negligible'' risks only if optimistic assumptions are made.

Response: APHIS disagrees with the commenter. The commenter simply cites the results of APHIS' own sensitivity analysis using ''pessimistic'' assumptions and provides no evidence or analysis demonstrating that the APHIS ''base case scenario'' assumptions are optimistic. APHIS combined qualitative and quantitative methods in its assessment of risk from live cattle. We qualitatively evaluated what we expect as the most likely scenario—prevalence drops in Canada over the next 20 years, resulting in decreases in potential release and exposure. While the commenter may consider this expectation an optimistic assumption, we do not and we note that this assumption is based on evidence from countries around the world that a feed ban provides continuous downward pressure on prevalence.

However, APHIS also considered other less likely (more pessimistic) scenarios, for which we assumed that the prevalence in Canada remained constant over the next 20 years, using a quantitative exposure model. The quantitative exposure model simulates the cattle management system in the United States, with assumptions made for certain variables, or parameters as input to this system. These parameters include BSE prevalence in Canada, which is an exogenous variable (and therefore, external to the U.S. system of mitigations), and many endogenous, or internal parameters. The endogenous parameters include various aspects of compliance with the FDA feed ban, how many carcasses enter the rendering system, what rendering processes are used, how rendered protein is incorporated into feed, and many other factors that can contribute to the spread of BSE. The values for each of these parameters basic assumptions that are meant to represent the most plausible and realistic representation of the U.S. system are reflected in the ''base case scenario.''

Assumptions regarding those parameters for which we have the least information (or the most uncertainty) were changed to more pessimistic, but still plausible, values in the sensitivity analysis, to evaluate the degree to which these changes would affect the results as compared to the base case. Given that at least one significant parameter—the constant prevalence of disease in Canada—was pessimistic even in the base case, we do not agree with the commenter's assertion that the quantitative model predicts low or negligible risk only if optimistic assumptions are used. Moreover, even under the more pessimistic scenario examined in the senstivity analysis, the reproductive rate of BSE (R_0) remains far below 1, indicating that the disease would not become established in the United States.

Issue: Several commenters stated that APHIS has not adequately considered the risk that imperfect compliance with U.S. SRM removal policies would have once we allow the importation of cattle over 30 months of age from Canada. One of the commenters stated further that APHIS provided no data or analysis in the proposed rule to address this series of known incidences of noncompliance.

Response: We disagree with the commenters. As noted in our risk assessment, the quantitative exposure model assumes that SRMs are effectively removed 99 percent of the time. This assumption is based on FSIS summaries of Noncompliance Records (NRs) performed from January 2004 to

May 2005 in about 6,000 federally inspected meat and poultry establishments. Based on these records, FSIS estimated that noncompliance with respect to SRM-related regulations had a frequency of less than 1 percent.

To explore the possible impact of assuming an arbitrary decrease (compared to the results of our exposure model) in SRM removal compliance on the availability of infectivity for human consumption, we can discuss the significance of an order of magnitude increase in available infectivity compared to our model's findings. First, we consider the results of that model, which used the unlikely assumption that prevalence in Canada (and thus the proportion of infected animals imported from Canada) remained constant over the next 20 years. In the model's scenario, the total amount of infectivity potentially available for human consumption over the 20 years of the analysis is 45 cattle oral infectious dose-50 units (ID_{50}s). (BSE infectivity is expressed in terms of cattle oral ID_{50}s. A cattle oral ID_{50} is defined as the amount of infectivity required to cause infection in 50 percent of an exposed cattle population (APHIS 2006)). The significance of cattle oral ID_{50} units to human exposure and susceptibility is not known; however, various studies suggest that the infectious agent may be 10 to 10,000 times less pathogenic in humans than in cattle because of a species barrier (EC SSC, 2000). Thus, if the cattle—human species barrier were 100, it would mean that 100 times more infective material would be required in order to have a similar probability of infecting a human as a bovine. Comer and Huntly (2003) estimated, after an evaluation of available literature, that 54 million bovine oral ID_{50} units were available for human consumption in Great Britain from 1980 to 2003. This extremely large amount of available infectivity has resulted in 165 cases of vCJD identified in the United Kingdom through April 2007, plus a few additional cases identified in other countries but attributed to exposure in the United Kingdom. When compared to the United Kingdom's BSE experience and the associated estimate of available bovine oral ID_{50} units, the expected, or average value of 45 cattle oral ID_{50} indicates that only a miniscule amount of the BSE infective agent that could possibly be available for potential human exposure in the United States over a 20-year period (APHIS 2006). (The potential for human exposure under this scenario is estimated at 1,200,000 times less in the United States than what the United Kingdom experienced during its BSE epidemic.) Even if compliance with the SRM ban were not as high as the 99 percent estimated in our exposure model, and we were to assume that the infectivity available for human consumption were increased by an order of magnitude (10x), it would still be far less than that estimated to have circulated in the United Kingdom and, we conclude, not to be of significance to human health.

Issue: One commenter stated that, although APHIS assumes that removal of SRMs from a bovine carcass will effectively shield consumers from exposure to BSE, numerous studies have demonstrated limitations on mitigating the risk of BSE exposure via SRM removal. In particular, the commenter stated that APHIS did not appropriately consider several studies (Buschmann, 2005; Iwamaru *et al.*, 2005; Hoffman, 2006) related to the distribution of SRMs, and that APHIS failed to explain why these uncertainties and concerns do not undermine its almost exclusive reliance on SRM removal requirements to protect American public health from potentially hazardous Canadian imports.

Response: We are aware of the studies cited by the commenter and do not agree that they question the efficacy of SRM removal. We acknowledge that studies using new methods that provide increased sensitivity will probably demonstrate the presence of PrP^{BSE} (the abnormal form of the prion protein) in various tissues. However, demonstrating the presence of PrP^{BSE} does not necessarily indicate the presence of BSE infectivity, especially if no infectivity is demonstrated via the most sensitive method available: Cattle-to-cattle exposure via intracerebral transmission. Therefore, one cannot automatically assume that a finding of PrP^{BSE} in a tissue means the tissue should be defined as an SRM. The OIE made this particular point in the *Terrestrial Animal Health Standards Commission Report, October 2006—Supporting Document for Chapter 2.3.13. Of the Terrestrial Animal Health Code on Bovine Spongiform Encephalopathy,* as follows:

> The availability of experimental infectivity data has significantly increased in recent years. During the same interval, extremely sensitive tests have been developed, including those employing highly sensitive transgenic mice strains and potentially more sensitive laboratory PrP detection methods. With the development of such highly sensitive methods, the probability of detection of PrP^{BSE} in tissues that are not currently listed as infectious is increasing. However, such findings need to be considered in context, and their relevance to establishing risk to consumers evaluated carefully when the quantity of PrP^{BSE} detected is potentially below the limit of detection of intracerebral (i.c.) cattle to cattle bioassay. By April 2007, 165 variant Creutzfeldt-Jakob Disease (vCJD) cases had been detected in the United Kingdom, a country where most probably the majority of the population was exposed to the BSE-agent. The latest models of the vCJD epidemic estimate that the potential scale of the clinical epidemic arising from food-borne exposure is unlikely to exceed 400 future cases in the United Kingdom (Clarke and Ghani, 2005). The relatively low number of predicted vCJD cases in relation to the massive exposure to the BSE agent is suggested to be due mainly to a significant species barrier between cattle and humans (Comer and Huntley, 2004; Bishop *et al.*, 2006).

APHIS is familiar with the results of the study (Buschmann, 2005) cited by the commenter in which tissues from a BSE-diseased cow were inoculated into genetically engineered (transgenic) mice that are highly susceptible to BSE and which over-express the bovine prion protein. Using this extremely sensitive mouse assay, this study demonstrated low levels of infectivity in the peripheral nervous system (*e.g.*, facial and sciatic nerves) of the infected cow. APHIS discussed these findings in its risk assessment and concluded that ''[g]iven all these factors there is not sufficient information to alter our understanding of the epidemiologically significant distribution of BSE infectivity in cattle.'' APHIS also acknowledges the results of Japanese studies in which PrP^{BSE} has been reported in the peripheral nerves of a case of BSE (Iwamaru *et al.*, 2005) and in some peripheral nerves of cattle slaughtered at abattoirs in Japan (Iwata *et al.*, 2006) by Western blot analyses. APHIS has also reviewed the German study in which infectivity was detected in the brainstem of an animal at 24 months post-infection (Hoffman, 2006). We have carefully considered all of these findings. USDA reviews and takes into consideration all BSE research for the definitions of SRMs, as does Canada and other countries internationally. As noted in the quote above, international policies regarding SRM removal have not changed based on the results of the studies discussed. Both the U.S. and Canadian policies regarding SRM removal are consistent with international standards.

Issue: One commenter referenced an FSIS study that found that the removal of SRMs can reduce human exposure to BSE by about 80 percent. The commenter stated that this level of protection is clearly inadequate to protect the United States from risks associated with the importation of older cattle from Canada that represent an inherently higher risk for BSE. The commenter then referred to the sensitivity analysis APHIS conducted as part of its risk assessment, which incorporated a higher value for Canada's BSE prevalence than in the more likely base-case scenario. The commenter expressed concern that the sensitivity analysis revealed that 108 BSE infected cattle could be imported into the United States over the next 20 years and result in 12 new BSE cases in the United States.

Response: We disagree with the commenter regarding the significance and applicability of the cited study. In this response, we present a more appropriate study from which to draw useful inferences regarding the impacts of SRM removal.

The 2004 FSIS document referred to by the commenter—Preliminary Analysis of Interim Final Rules and An Interpretive Rule to Prevent the BSE Agent From Entering the U.S. Food Supply''—is an analysis intended to evaluate the major impacts of measures contained in the FSIS interim final rules published and implemented in January 2004. FSIS used the Harvard model in this analysis to estimate the benefits of these measures, specifically ''those [benefits] resulting from the reduction in human exposure to BSE infectivity.'' FSIS used this model to create a baseline estimate of potential human exposure and then evaluated three scenarios of risk mitigation options (*e.g.*, SRM removal) for comparison to the baseline. In each simulation, FSIS assumed that five infected animals were introduced into the United States in 2003, and then simulated the spread of BSE infectivity until 2020. The simulations of the risk mitigation measures were run assuming that the mitigations were implemented in 2004, *i.e.*, approximately 12 months after the introduction of infected animals. While the commenter is correct that this analysis demonstrated a reduction in potential human exposure of 80 percent, the comment does not accurately portray the context of this result. Given the assumptions used in the simulation (*i.e.*, the risk mitigation measures, including SRM removal, were not implemented until 12 months after introduction of infectivity), a certain amount of infectivity would have become available for human exposure before the mitigations measures were implemented in the model scenario. Therefore, the mitigation measures could never eliminate all of the infectivity available. Since all scenarios included at least some time in which the mitigations were not implemented, under the simulations, a certain amount of potential infectivity was allowed into inappropriate channels, such as human food. Because none of these scenarios incorporated the more realistic assumption that the mitigations were implemented (even imperfectly) throughout the simulation period, it is inappropriate to use this analysis as a citation for the level of public health protection provided by risk mitigation measures in place in the United States.

A more appropriate analysis for understanding the role of SRM removal in potential human exposure to BSE infectivity would be the FSIS update of the same Harvard simulation model that was available for public comment in 2006. APHIS cites the analysis in the risk assessment conducted for this rulemaking as Cohen and Gray (2005). This updated model used the ''base case'' as the circumstances in the United States prior to December 2003, and simulated the response of the U.S. system for 20 years following the import of BSE-infected cattle. FSIS' updated model estimated the impact of various risk management measures, including measures that were adopted, considered, or proposed by various agencies and groups. These simulations, where the risk mitigation was applied during the entire simulation, as opposed to the simulation in the analysis cited by the commenter (in which it was not), indicated that removing SRMs, as currently defined by FSIS, reduced potential human exposure by more than 99 percent, on average. This report also stated that ''[i]t is worth noting that these measures reduce what is already a small exposure in absolute terms.''

Issue: One commenter stated that SRM removal requirements have not been in place long enough for an effect to be determined, due to the exceedingly long incubation periods assumed for humans. The commenter stated further that the experience of other countries in which BSE has been detected (except for Canada) cannot be used to demonstrate that SRM removal is highly effective, because other countries have more stringent SRM removal requirements than do Canada and the United States and their experience is not applicable for predicting risk in the United States.

Response: The commenter appears to be questioning two points—first, whether SRM removal is actually highly effective in protecting public health, and second, whether experience in Europe can be used as a comparison for expectations in North America.

The commenter is correct in that there has been no specific controlled study that clearly and unequivocally demonstrates the effectiveness of SRM restrictions on protecting public health. The absence of such a study does not negate the fact, however, that substantial epidemiological and case evidence clearly indicate the success of such control measures. It is widely and generally accepted internationally, including by such international bodies such as the World Health Organization (WHO) and the OIE, that the primary public health protective measure regarding BSE is the removal of SRMs from the human food supply (WHO, 2002).

The OIE Scientific Revue notes the following: ''Excluding SRM from the human food chain effectively minimizes the risk of human exposure and is the most important measure taken to protect consumers. Failure to remove SRMs would probably expose a large number of consumers to an unnecessary risk.'' (Heim and Kihm, 2003). This point is also widely acknowledged in scientific literature, including articles cited by the commenter. For example, Bradley and Liberski (2004) conclude that ''risks to humans from infected cattle are now remote so long as the [bans on the use of SRMs in human food] are rigorously enforced.'' Fox and Peterson (2004) conclude that ''[a]doption of the human [specified bovine offal] ban in the United Kingdom in 1989 is probably the only example in the BSE story of a government going beyond expert opinion in taking a precautionary measure. It turned out to be the correct decision, and likely saved thousands of people from exposure to the disease.''

Simulation models and analysis conducted in the United Kingdom support the assumption that primary exposure sources for people were SRMs in the food supply prior to imposed restrictions. These models have been updated and revised repeatedly since the original identification of vCJD and the link to BSE in cattle (Ghani and others, 1998, 2000, 2001, 2003, 2005). They incorporate assumptions for all the parameters that could influence the course of vCJD in the United Kingdom—including assumptions about primary exposure from dietary sources, calculations about how many infected cattle may have been slaughtered at different points in time, what tissues from those animals were available for consumption, and what restrictions were imposed on the tissues and types of products available for consumption. The models are updated routinely to incorporate new information about vCJD cases as they are reported.

These models have been used to predict the course of the vCJD epidemic in the United Kingdom. Initially, the projections were fairly high with considerable uncertainty. As more information is incorporated into the models, these projections continue to decline and the uncertainty levels also decrease. The number of clinical cases of vCJD in the United Kingdom has continued to decline since an apparent peak in 2000 (Andrews, 2007). This decline is consistent with projections made from the models, thus validating some of the assumptions used in the models. As an example, Cooper and Bird (2003) assume that the primary sources of exposure are the consumption of meat products—including mechanically separated meat and head meat—that were most likely contaminated with SRMs such as spinal cord, dorsal root ganglia, and brain. Restrictions on the inclusion of spinal cord and brain, among other tissues, were initially imposed in the United Kingdom in 1989. Restrictions on the production of mechanically separated meat, which included a significant level of infectivity from dorsal root ganglia, were imposed in the United Kingdom in 1995. Cooper and Bird (2003) concluded that ''[t]here is remarkable similarity between the age distribution and gender of simulated and observed vCJD patients, which supports (but does not prove) our assumption about the primary sources of exposure to BSE.''

The commenter notes the ''exceedingly long incubation periods assumed for humans.'' More recent updates of the models described previously have included estimates of the mean incubation period for vCJD (Ghani *et al.*, 2003) and estimated the mean incubation period for vCJD at 12.6 years when using the accumulated case data from confirmed vCJD cases. When additional information was added from results of a screening study performed on appendix and tonsil tissues, the mean incubation period was 16.7 years when fitted to this data. From this evidence, we can conclude that even the longer mean incubation period of 16.7 years would allow sufficient time to demonstrate the effect of SRM restrictions on the outbreak, since the initial SRM restrictions were imposed in 1989. We note that all vCJD cases that have been genotyped to date, with one exception, have been of the homozygous methionine (MM) genotype at codon 129 of the human prion protein gene. It is estimated that approximately 40 percent of the Caucasian population is homozygous methionine, with approximately 10 percent valine homozygous, and the remaining 50 percent heterozygous. While the effect of genotype on vCJD is still unknown, we can evaluate scenarios in the MM genotype as an example of epidemic progression, because this genotype may be the most susceptible and/or have shorter incubation periods than other genotypes.

The second point the commenter raises is whether there would be significant differences in potential public health exposure due to the different definitions of SRMs in Europe and North America (Canada and the United States). While these definitions identify essentially the same tissues, European regulations define tissues such as brain and spinal cord as SRMs in animals greater than 12 months of age, where North American regulations define these tissues as SRMs in animals greater than 30 months of age.

In the past few years, significant consideration has been given to the age limits on SRMs and their appropriateness. Additional information obtained from new research findings has contributed to these evaluations. Scientists in Europe have specifically examined these findings as part of their consideration on the age limit in cattle for the removal of SRMs (EFSA, 2005; 2007). In each of these opinions, they conclude that any likely detectable infectivity in the central nervous system (CNS)—including the SRMs in question—appears at about 75 percent of the incubation time. These opinions also note that the experimental low-dose scenarios are more likely to resemble the actual field exposure. The low-dose research scenarios are those in which calves were exposed orally to 1 gram of highly infective brain tissue, rather than the 100 grams used in the high-dose scenario. Experimental attack rate studies indicate that the incubation period for the low-dose scenario has a mean of 60 months, with a range of 45 to 73 months (Wells *et al.*, 2007). Using the low end of this range of incubation period, and assuming that infectivity is present in the CNS at 75 percent of the incubation period, they predict that infectivity would be sub-detectable or still absent in CNS in cattle aged 33 months.

In the United Kingdom, even including cases from the height of the BSE epidemic there, which are believed to have had shorter incubation periods than more recent cases, the peak age at onset of clinical signs was 5 to 6 years. This age of clinical onset is consistent with an assumption that the average incubation period in the United Kingdom has been about 60 months. The average age of animals identified with disease in the EU is higher than this—the average was 86 months in 2001 and has increased since then. This evidence indicates that considering certain tissues in bovines 30 months of age or older to be SRMs, and removing and disposing of those tissues, would eliminate the majority of infectivity present, and removing and disposing of these same tissues from bovines between 12 and 30 months of age would not provide any significant additional protection.

This same point is illustrated in various models. Comer and Huntly (2003) modeled the potential human exposure available in the United Kingdom from 1980 through 2002. They concluded that an estimated total of 54 million bovine oral ID_{50} units could have been consumed in that timeframe. This period included both the beginning of the epidemic in cattle, before the disease was recognized and public health control measures were established, and later in the epidemic when control measures were developed and instituted. Comer and Huntly also concluded that 99.4 percent of this estimated exposure was from animals older than 30 months of age. Therefore, SRM restrictions from animals greater than 30 months would reduce the vast majority of potential exposure.

In summary, we are in agreement with the conclusion that has been widely reached and that has generally been accepted internationally, that the primary public health protective measure regarding BSE is the removal of SRMs from the human food supply.

Issue: One commenter stated that APHIS' assertion that the rendering process is important in the inactivation of the BSE agent is overstated.

Response: As we stated in our January 2007 proposed rule, we recognize that standard rendering processes do not completely inactivate the BSE agent, and that rendered protein such as MBM derived from infected animals may remain contaminated. However, the rendering process is an important factor in BSE risk reduction for two reasons.

First, standard rendering processes will inactivate significant levels of any BSE infectivity that might remain in materials sent to rendering by subjecting the material to intense heat and pressure. The risk assessment conducted for this rulemaking noted that the rendering process has proven to be effective in reducing the level of infectivity. This is based on data regarding inactivation by various rendering methods (Taylor *et al.*, 1995; Taylor *et al.*, 1997). The assumptions on this point used in the quantitative exposure model have been previously explained (Cohen *et al.*, 2002, 2003) and include a range from 0 logs reduction in infectivity in a vacuum rendering system to 3.1 logs reduction in a batch system. The proportions of cattle rendered in the various systems were also explained, with the majority of rendering (90 percent) done in either a continuous/fat-added system (providing a 2.0 log or 99 percent reduction) or a continuous/no-fat-added system (providing a 1.0 log or a 90 percent reduction). On average, the rendering process inactivates 1.4 logs of infectivity, or greater than 97 percent.

Additionally, rendering serves as a critical control point in redirecting ruminant proteins away from cattle feed. In the risk assessment we conducted for this rulemaking, we explained that the rendering process will contribute to the prevention of BSE as part of a series of sequential barriers, rather than as an independent barrier.

Issue: One commenter expressed concerns about plate waste as a potential pathway for BSE infection of U.S. cattle, because the proposed rule did not prohibit the feeding of plate waste, including beef, to cattle. The commenter referred to APHIS' risk analysis that accompanied the rulemaking related to the importation of boneless beef from Japan (70 FR 73905–73919, Docket No. 05–004–2), which concluded that the plate-waste pathway did not present a significant BSE risk, and stated that the conclusion reached in that risk assessment would not be applicable regarding beef from Canada, because the expected amount of product from Canada would be much greater than that projected for importation from Japan.

Response: We do not agree with the commenter that plate waste is a potentially significant BSE pathway due to this rule. In the risk analysis we conducted for the rule related to the importation of boneless beef from Japan, we discussed direct and indirect exposure pathways by which such beef might expose U.S. cattle to BSE if the product contained the BSE agent. In addition, we stated in unequivocal terms that the primary factors limiting the likelihood that whole cuts of boneless beef imported from Japan would expose the U.S. cattle population to BSE are (1) the inherently low risk of the product, (2) measures to prevent contamination, which would be the same for any beef from cattle from Canada that might become plate waste, and (3) the fact that the product is unlikely to be fed to cattle.

Although we recognized in our rulemaking for boneless beef from Japan that the product (inherently low-risk boneless beef) is not intended for animal consumption, we evaluated pathways by which some small fraction of the product might inadvertently be fed to cattle. We considered the possible pathways to include restaurant trimmings and plate waste, and the direct feeding of human food waste to cattle. We further evaluated pathways by which home food waste and plate waste can be fed directly to cattle, and we did not identify any epidemiologically significant pathways for exposure of the U.S. cattle population. Specifically for plate waste, which is allowed to be incorporated into ruminant feed, we considered that the amount of meat in the plate waste would be insignificant (Cohen *et al.*, 2001; 2003). Furthermore, because FDA requires that the plate waste be further heat processed for feed, it may be subject to rendering processes that will inactivate significant levels of the agent, further reducing the level of infectivity in the rendered product. (Cohen *et al.*, 2001; 2003).

The inherent (low risk) characteristic of the product imported under the Japan rule, coupled with the measures to prevent contamination of the product and the fact that the product is unlikely to be fed to cattle, were the primary factors in our evaluation. We did not dismiss any risk based on quantity. We considered the level of imports specifically under that rule as an additional limiting factor for any infectious material, if present, in the product.

Canadian cattle imported under this final rule will be slaughtered for edible meat production at slaughter plants within the United States and would be subject to FSIS' slaughter restrictions. These restrictions include ante-mortem inspection and prohibition of the slaughter of downer animals. In addition, FSIS requires the removal of SRMs, which is a critical risk measure preventing contamination of edible meat with BSE infectivity. We consider these measures, combined with the fact the edible meat is inherently low risk for the BSE agent, to be sufficient to mitigate the risk of exposing U.S. cattle to the BSE agent, if present, via plate waste.

Issue: One commenter noted that a peer reviewer of the 2005 Harvard Risk Assessment of Bovine Spongiform Encephalopathy Update: Phase IA suggested lowering the estimate that, at ante-mortem inspection, a Federal inspector will identify BSE symptoms in infected animals 90 percent of the time. The commenter stated further that the Canadian BSE cases have not been clinical suspects.

Response: The FSIS revision of the ante-mortem assumptions demonstrates that the assumed ante-mortem detection rate does not strongly influence the results of the analysis. The commenter noted that cutting the detection rates to 50 percent (ambulatory animals) and 25 percent (non-ambulatory animals) increases the projected number of infected animals by approximately 5 percent. Importantly from the perspective of APHIS, this revision had a limited impact on R_0. The revised FSIS assessment (dated December 26, 2006) included several changes relative to the original FSIS assessment (dated October 31, 2005).[9] The mean value of R_0 increased from 0.24 in the original FSIS assessment to a mean value of 0.27 in the revised FSIS assessment. The 95th percentile estimate for R0 increased from 0.45 in the original FSIS analysis to 0.48 in the revised FSIS analysis. In conclusion, the FSIS analysis indicates that changing the ante-mortem assumptions does not appreciably alter the projected spread of BSE. On the basis of the FSIS finding, APHIS concludes that a change in the ante-mortem detection rate of this magnitude does not qualitatively alter APHIS' conclusions, and therefore does not merit revision to the simulation model.

Issue: One commenter cited published literature described in the risk assessment to point out the levels (in grams) of highly infective brain tissue that resulted in infection of calves following experimental oral exposure. The commenter then asked if, after gauging what dosage is necessary to transmit BSE orally, the risk to each animal should be calculated based on the number of times it has a feeding.

Response: There is no need to revise the model in response to this comment for the following reasons. First, the model does not assume any threshold below which exposure to BSE would pose zero risk of infection. Second, and as a result of the first point, the model assumes that every exposure event incrementally contributes to the risk of infection.

Issue: One commenter noted that the number of infected animals that survive sufficiently long enough to develop clinical disease is always small in the exposure assessment (even under very pessimistic assumptions), and that, presumably, clinical animals will come primarily from those animals characterized as ''beef repro'' and ''dairy'' (APHIS 2006b, table 5). The commenter questioned whether the estimates of animals imported in these classes of animals and their time-

[9] The original and the revised FSIS assessments may be viewed at *http://www.fsis.usda.gov/Science/Risk_Assessments/index.asp.*

dependent removal (death, slaughter, and cull) rates from the population before clinical signs develop were realistic and validated.

Response: This comment appears to consist of two parts. In the first, the commenter asks if the estimates of numbers of imported breeding animals are realistic and valid, and in the second, the commenter asks if the time-dependent removal of these animals is realistic and valid. Because different sources of evidence support these two components of the question, we address them individually in the following discussion.

As we explained in response to another comment, our estimates of imports of all cattle classes, including breeding animals, were developed by USDA, ERS. They are based on a well-accepted, iterative method involving expert opinion and country-commodity specific modeling. Based on the above description of this process, we expect that alternative plausible assumptions for the number of imported breeding animals would not likely vary substantially from those based on the most current inputs.

With regard to the commenter's questions about time-dependent removal of these animals (i.e., at what point animals are removed from the cattle population by, e.g., slaughter) APHIS notes that imported animals are integrated into the U.S. herd and thus are removed (slaughtered) using the same distribution used for native-born U.S. cattle. The slaughter parameter used in the Harvard model (Cohen *et al.*, 2003) ''represents the probability that cattle will be sent to slaughter. This probability depends on the [animal's] type of production, age, and gender (e.g., steers and heifers are sent to slaughter earlier than dairy cows or reproductive beef animals).'' The developers of the model based the associated assumptions for the parameter on the following sources, listed in Cohen *et al.* 2003: USDA (U.S. Department of Agriculture 1998a), Radostits *et al.*, 1994, and several personal communications (Clay 2001; Crandall 2001; Pinter 2001). The model and its parameters have been subject to previous peer review and have been found to be realistic.

Issue: One commenter expressed concern that, if an undetected BSE-infected cow were imported into a family herd and, upon becoming incapacitated, were sent to a local small rural facility to be processed into beef for the cow's owners, BSE could enter the food chain.

Response: The commenter seems to be concerned about the possibility of BSE entering the human food chain after a cow is slaughtered for personal use at a custom slaughter facility. However, such usage would be in contravention of FSIS regulations. FSIS prohibitions on the use of SRMs for human food apply to cattle slaughtered for personal use at custom facilities, as does FSIS' prohibition of the use of all non-ambulatory disabled cattle in the human food chain (FSIS 2007).

Issue: A number of commenters recommended that the provisions of the proposed rule not be implemented unless focused testing for BSE of cattle imported from a BSE minimal-risk region is carried out at slaughter. A number of commenters recommended that any bovine 30 months of age or older imported into the United States from a BSE minimal-risk region be tested for BSE before being used for food. Several commenters recommended that USDA require testing for BSE of all cattle imported to the United States from countries in which BSE has been diagnosed, such as Canada. One commenter recommended that the proposed rule not be implemented until rapid-test technology for BSE is provided to all U.S. slaughtering facilities. Another commenter recommended that USDA allow slaughter establishments to conduct additional tests to satisfy consumer demands.

Response: Our peer-reviewed risk assessment concluded that the likelihood of BSE release from cattle imported from Canada is likely to be extremely low because (1) the prevalence of BSE in Canada is extremely low, and (2) measures requiring imported animals to be born on or after March 1, 1999, will further decrease the likelihood that those animals had been exposed to infectious material. Moreover, the exposure assessment for live animals qualitatively indicates that because of the barriers to BSE transmission in the United States, the likelihood of BSE exposure and establishment in the U.S. cattle population as a consequence of infectivity introduced via imports from Canada is negligible.

Further, although we understand the interest expressed by some commenters in testing certain cattle for slaughter, such comprehensive testing would not necessarily yield accurate or useful results. Current testing methodology can detect a positive case of BSE only a few months before the animal begins to demonstrate clinical signs. The incubation period for BSE—the time between initial infection and the manifestation of clinical signs—is generally very long—on average about 5 years, which means that there is a long period during which testing an infected animal would produce negative but incorrect results, especially if the animal is clinically normal. The import projections anticipate that the majority of animals imported for immediate slaughter and/or for feeding and subsequent slaughter are young animals, generally slaughtered at less than 30 months of age. Since current tests only determine the presence of BSE shortly before the likely onset of symptoms, testing young, apparently normal animals is not an effective use of the tests. In addition, since SRM removal requirements are in place, testing apparently normal animals at slaughter does not provide any significant additional public health protective measure. Heim and Kihm (2003) note that it is questionable whether testing all animals at slaughter provides any measurable increase in consumer safety. Additionally, they note that such testing can be counter-productive since measures such as SRM removal may not be sufficiently emphasized due to the perceived total reliability of the testing. Given that testing of clinically normal, apparently healthy cattle does not provide meaningful data, combined with the conclusions of the risk assessment concerning the extremely low likelihood of release and negligible likelihood of exposure and establishment in the U.S. cattle population, testing these animals at slaughter as commenters suggest is not appropriate at this time.

Issue: A number of commenters stated that APHIS should not expand the types of bovines allowed importation from a BSE minimal-risk region until it can be shown that the current U.S. regulations are being adequately enforced. Several commenters cited as an example of inadequate enforcement an incident involving the importation and movement to slaughter in the United States of Canadian cattle over 30 months of age. Of those commenters, some expressed concern regarding the time it took to trace the animals back.

Several commenters stated that records from Washington State suggest that Washington and several other States are having difficulty tracking hundreds of cattle that arrive from Canada each week. Other commenters stated that a number of cows entered the United States from Canada without ear tag identification or certificates of health, or had eartag identification that did not match the accompanying health certificate.

Response: The commenters referenced an alleged violation of the regulations in which imported Canadian feeder cattle were reportedly sold through an auction market in the United States. A detailed investigation into the incident demonstrated that the animals in question were legally imported for immediate slaughter.

Commenters also referenced issues that State authorities identified in tracking imported animals. Certain States instituted policies or regulations that required additional movement controls and verification beyond the APHIS import requirements. In these instances, it is the responsibility of the State authorities to monitor compliance with their regulations and to follow up on any reported violations. APHIS can assist in resolving issues if requested.

APHIS port veterinarians inspect all live animal shipments entering the United States. These inspections include careful review of the health certificate accompanying the animals and a visual inspection of the animals. Live cattle presented at the port of entry with no accompanying valid health certificate are denied entry. We are not aware of any instances where shipments of cattle have entered through a designated port of entry without a health certificate. We recognize that animals can lose eartags at various points in the process and have established procedures to reapply eartags with appropriate documentation. In addition, apparent transposition of digits or similar errors in recording eartag numbers can often be addressed during consultation with CFIA and/or the private veterinarian involved.

APHIS is not aware of significant or repeated violations of the existing APHIS import regulations, and no evidence of such violations has been provided by the commenters concerned. Individual instances of errors or violations can, and have, occurred. These are investigated and dealt with appropriately. At no time have any of these errors presented a significant threat to animal or public health.

Issue: One commenter stated that the animal health risk assessment does not address the risks to the U.S. cattle industry, or to human health, of having additional BSE cases discovered in the United States.

Response: We disagree with the commenter. In our risk assessment, we addressed both the likelihood and the consequences of the adverse event of concern. We examined the likelihood of BSE becoming established in the United States, as well as the incremental consequences that may occur for every additional case that might be detected as a result of implementing the proposed rule. As discussed in the consequences section of the risk assessment, based on the responses to cases discovered in the United States since the initial finding of BSE in Canada in 2003, we do not expect additional costs (such as further closure of export markets or reduction in domestic consumption). When combined with the expected number of clinical cases, the resulting risk estimation is negligible, as discussed in the risk estimation section of the risk assessment. Determining what portion of the finding of negligible risk might be borne by the U.S. cattle industry, as the commenter requests, is unnecessary for the purposes of our risk assessment. Because we have determined the overall risk to be negligible, we do not consider it warranted to subdivide what is already a negligible risk in assessing its potential impact on various sectors.

The overall economic consequences of the proposed rule on trade were addressed by the Preliminary Regulatory Impact Analysis that was conducted for the proposed rule. That document concluded that, although larger net welfare benefits may be realized under the scenario of no restriction by date of birth on live bovine imports, the proposed rule is preferable because it would pose a lower risk of BSE infectivity entering the United States via imports of live bovines from Canada. In response to public comments, the revision of this analysis published with the final rule has further examined the welfare effects on certain sub-categories of the cattle industry.

As noted, the risk assessment specifically examines animal health, not human health. However, there would be no impact of detected cases on human health, because such animals would be removed from the human food supply. The risk assessment did, however, note the following and indicated that additional discussion of the human health aspects were included in the environmental assessment. ‘‘Thus, although human health is not the focus of this assessment, we note that, even our quantitative model, which includes multiple sources of risk over-estimation, indicates that, over the 20 years of the analysis, only 45 cattle oral infectious dose-50 (ID_{50}) units will be available for human exposure.’’ In comparison, as discussed above, Comer and Huntly (2003) estimated that 54 million bovine oral ID_{50} units were available for human consumption in Great Britain from 1980 to 2003. This extremely large amount of available infectivity has resulted in 165 cases of vCJD identified in the United Kingdom through April 2007, plus a few additional cases identified in other countries but attributed to exposure in the United Kingdom. When compared to the United Kingdom's BSE experience and the associated estimate of available bovine oral ID_{50} units, the expected, or average value of 45 cattle oral ID_{50} would result in a miniscule amount of the BSE infective agent that could possibly be available for potential human exposure in the United States over a 20-year period (APHIS 2006). The potential for human exposure under this scenario is estimated at 1,200,000 times less in the United States than what the United Kingdom experienced during its BSE epidemic. Whereas potential human exposure to infectivity is expected to be miniscule and epidemiologically insignificant, exposure (and hence potential human health impacts) due to detected cases would be nonexistent; detected cases of BSE are removed from the food supply.

OIE Guidelines

The OIE is recognized by the World Trade Organization (WTO) as the international organization responsible for development and periodic review of standards, guidelines, and recommendations with respect to animal health and zoonoses (diseases that are transmissible from animals to humans). The OIE guidelines provide a science-based reference document for international trade in animals and animal products. The OIE guidelines for trade in terrestrial animals (mammals, birds, and bees) are detailed in the Terrestrial Animal Health Code (OIE, 2006a). The OIE guidelines on BSE are contained in Chapter 2.3.13 of the Terrestrial Animal Health Code and are supplemented by Appendix 3.8.4 of the Code.

Some commenters stated that our proposed rule was inconsistent with OIE guidelines. We discuss below those areas addressed by the commenters.

Issue: Several commenters stated that the proposed rule is inconsistent with OIE guidelines because it did not require'as the commenters stated OIE guidelines recommend—that for countries that do not have an effectively enforced feed ban that is reducing the incidence of BSE, the vertebrae and all other SRMs be removed from cattle over 12 months of age.

Response: The OIE-recommended guidelines regarding BSE contain criteria for categorizing the risk of a country as either negligible risk, controlled risk, or undetermined risk. The basis for categorization encompasses several factors, including a risk assessment, surveillance efforts, regulatory structure for notifiable diseases, and education and awareness efforts. Canada has an effectively enforced feed ban. Further, Canada has been categorized by the OIE as controlled risk (OIE 2007b), rather than as undetermined risk as implied by the commenters. The OIE guidelines recommend that certain SRMs be removed from cattle over 30 months of age for exports from countries that are considered controlled risk, and cattle over 12 months of age for exports from countries that are considered undetermined risk.

Issue: Several commenters stated that the proposed rule did not comply with OIE guidelines for either controlled risk or undetermined risk countries regarding the birth date of cattle in relation to the date of effective enforcement of a feed ban. The commenters stated that the OIE recommends that cattle not be exported from a country of undetermined risk for BSE, which the commenters stated Canada qualifies as, unless the cattle were born at least 2 years after the feed ban was effectively enforced. Nor, said the commenters, did the proposed rule meet the OIE guidelines that cattle not be exported from a controlled risk country until after the date a feed ban was effectively enforced.

Response: We disagree with the commenters. As noted previously, the OIE has categorized Canada as controlled risk. Our proposed changes are consistent with the OIE guidelines for trade in live animals from a controlled risk region. As part of the risk analysis that APHIS conducted in conjunction with its January 2005 final rule that recognized Canada as a BSE minimal-risk region, APHIS evaluated a series of measures introduced in Canada to prevent the feeding of ruminant proteins to ruminant animals. USDA considered the compliance activities reported by CFIA as well as epidemiological information in concluding that compliance with the feed ban was good, and that the feed ban was effectively enforced.

The OIE guidelines do not define how to determine the date the feed ban was effectively enforced. APHIS identified March 1, 1999, as the date of effective enforcement of the feed ban in Canada based on a careful evaluation of the full panoply of features employed by the feed ban and consideration of regulatory enforcement actions (i.e., a practical implementation period) and sufficient additional time to allow previously manufactured feed to cycle through the system.

Issue: Several commenters stated that APHIS published the proposed rule despite the fact that Canada does not meet OIE guidelines for testing for BSE, and requested that APHIS withdraw or delay this rulemaking until Canada significantly increases its BSE testing. One commenter stated that, to meet OIE testing guidelines, Canada needs to test with negative results 187,000 consecutively targeted cattle with a BSE risk equal to that in the casualty slaughter age between 4 and 7 years, in order to be confident that the BSE prevalence in Canada is not more than 1 in 100,000. However, said the commenter, Canada tested only 143,528 total cattle in the period from 2004 through February 12, 2007, with 8 positive cases found during that period.

Response: We disagree with the conclusions and assertions of the commenters. The OIE Terrestrial Animal Health Code, 2006, Appendix 3.8.4, contains guidelines for BSE surveillance. These guidelines describe a weighted points system for BSE surveillance samples and suggest total points targets for what is considered as either Type A or Type B surveillance. As noted in the Code, ''The application of Type A surveillance will allow the detection of BSE around a design prevalence of at least one case per 100,000 in the adult cattle population in the country, zone or compartment of concern, at a confidence level of 95 percent.'' Based on this definition, we assume the comments described above refer to Type A surveillance. The points target for Type A surveillance in a country such as Canada with an adult cattle population of more than 1,000,000 is 300,000 points, to be obtained over a 7-year period.

Under the OIE guidelines, specific ''point values'' are assigned to each sample, based on the surveillance stream or subpopulation of animals from which it was collected, as well as the likelihood of detecting infected cattle in that subpopulation. Table 4, below, outlines the point values for samples obtained from the different surveillance streams:

SURVEILLANCE POINT VALUES FOR SAMPLES COLLECTED FROM ANIMALS IN THE GIVEN SUBPOPULATION AND AGE CATEGORY

Surveillance subpopulation			
Routine slaughter	Fallen stock	Casualty slaughter	Clinical suspect
Age >1 year and <2 years			
0.01	0.2	0.4	N/A
Age >2 years and <4 years (young adult)			
0.1	0.2	0.4	260
Age >4 years and <7 years (middle adult)			
0.2	0.9	1.6	750
Age >7 years and <9 years (older adult)			
0.1	0.4	0.7	220
Age >9 years (aged)			
0.0	0.1	0.2	45

As demonstrated in table 4, a sample from the specific surveillance subpopulation where BSE is most likely to be detected—i.e., a middle adult clinical suspect—provides the most surveillance points. Conversely, a sample from the subpopulation where BSE is least likely to be detected—

generally routine slaughter—provides the least points.

It appears that the commenter calculated the number of samples necessary from an assumed surveillance subpopulation. That is, if a country samples only middle adult casualty slaughter animals at 1.6 points per sample, it would need to sample 187,000 cattle in this specific subpopulation to obtain 300,000 points.

However, it is inaccurate to compare such a calculation to Canada's surveillance efforts. The commenter referred to surveillance conducted in Canada from 2004 through February 2007—a period of slightly more than 3 years. However, as noted, the OIE guidelines provide for points targets to be met over a 7-year period. Therefore, a valid comparison of the OIE guidelines and the testing conducted in Canada would need to be based on surveillance totals from, e.g., January 2000 through December 2006.

More significantly, the commenter appeared to assume that Canada is sampling only one specific surveillance stream—casualty slaughter animals from 4 to 7 years of age. Attachment 1 of the risk assessment conducted for this rulemaking—''Estimation of BSE Prevalence in Canada (APHIS 2006c)''—contains tables that allocate Canadian surveillance samples into the different surveillance streams. In every year from 1999 through August 2006, animals from three different surveillance streams—fallen stock, casualty slaughter, and clinical suspect—of all ages were sampled. Therefore, the points value for each sample will vary in line with the previously provided table. A summary of OIE points can be calculated from the information provided. For example, data from surveillance conducted in Canada in 2005 for only one surveillance stream—clinical suspect—show that, in that year, 2 clinical suspects less than 2 years old were sampled (0 points), 43 clinical suspects 2 to 3 years of age were sampled (11,180 points), 120 clinical suspects 4 to 6 years of age were sampled (90,000 points), 68 clinical suspects 7 to 8 years of age were sampled (14,960 points), and 194 clinical suspects greater than 9 years of age were sampled (8,730 points). Testing of the 194 clinical suspects sampled in 2005 provided a total of 124,870 points for this 1 surveillance stream in 1 year. The total number of OIE points accumulated by Canadian surveillance over the 7-year period ending at August 2006 is 922,176. This far exceeds the OIE point target of 300,000 points for Type A surveillance.

Issue: Several commenters stated that the proposed rule did not comply with the OIE guidelines with regard to the importation of SRMs. The commenters stated that the OIE recommends that SRMs not be imported for feed or fertilizer and the proposed rule would allow SRMs to be used for non-ruminant feed and fertilizer.

Response: The commenters are correct that the OIE guidelines recommend that certain tissues—SRMs—should not be traded. Specifically, the guidelines recommend that SRMs ''should not be traded for the preparation of food, feed, fertilizers, cosmetics, pharmaceuticals including biologicals, or medical devices.'' It also states that ''protein products, food, feed, fertilizers, cosmetics, pharmaceuticals or medical devices prepared using these commodities (unless covered by other Articles in this Chapter) should also not be traded.'' However, the Code also includes guidelines for trade in live cattle—from which such materials could be derived after export to the recipient country—from countries of any risk status, thus creating an apparent contradiction in recommendations.

We recognized in our risk assessment that SRMs from live cattle imported under these conditions could enter the U.S. system, similar to SRMs from U.S. cattle. The assessment acknowledges that SRMs from imported animals—just as those from domestic animals—can enter the rendering system in the United States, and the quantitative exposure model in the risk assessment specifically simulates this situation.

Certain rendered protein products—bone meal, for example—can be included in fertilizer. However, this is not a common practice in the United States, as the vast majority of rendered protein products are sold for use in animal feed. Raw or untreated tissues are not generally used as fertilizer, and in fact are often prohibited from being spread on land. Therefore, any consideration of risk from fertilizer would be an evaluation of the risk of cattle exposure to oral consumption of fertilizer that contains in part rendered protein.

Our quantitative exposure model evaluates the potential oral exposure of cattle to feed containing infected rendered protein products. It does not specifically model potential exposure through fertilizer. However, it assumes that all rendered ruminant protein products are sold for feed use. Therefore, any of the infectivity contained in rendered ruminant protein is simulated through the potential for direct feed exposure—either through misfeeding, cross-contamination, or poultry litter. Feed constitutes a more significant pathway than potential consumption of a component of a fertilizer product after it is spread on a pasture. Therefore, any potential exposure through fertilizer would be assumed to be far less than exposure through feed, which is modeled in the risk assessment.

For the reasons discussed above, we disagree that this rule is inconsistent with OIE guidelines. In those cases where one might see in the OIE guidelines an internal contradiction, that contradiction is much more apparent then real, and we consider this rule to be consistent with the intent and objectives of the guidelines. Therefore, we are making no changes based on the comments.

International BSE Classification of Canada and the United States

Issue: At the time APHIS was accepting public comments on its January 2007 proposed rule, the OIE was in the process of completing its evaluation of countries internationally to determine which BSE risk category would be appropriate to each country evaluated. Several commenters recommended that our proposed rule be delayed until the OIE released its determinations. Commenters stated that waiting for release of the OIE designations would allow the U.S. categorization of BSE minimal-risk regions to be made consistent with OIE guidelines. Additionally, stated some commenters, the proposed rule could negatively influence the OIE's BSE risk categorization of the United States. One commenter recommended that the rulemaking be postponed until the European Food Safety Authority (EFSA) announced its BSE risk categorization of various countries, including Canada.

Response: Under the OIE risk classification system, a country can be considered to be ''negligible risk,'' ''controlled risk,'' or ''undetermined risk'' with regard to BSE. Based on the risk classification of a country, the OIE provides guidelines for the safe trade of cattle and cattle products. As noted above, at the May 2007 annual General Session of the OIE International Committee, a list of countries recognized as being BSE controlled risk or negligible risk was confirmed. Both the United States and Canada were confirmed as BSE controlled risk countries (OIE 2007b).

Request To Allow Imports From the European Union

Issue: One commenter requested that APHIS implement OIE import guidelines regarding BSE or, alternatively, recognize the European Union as a BSE minimal-risk region.

Response: As noted above, it is APHIS' intent to develop rulemaking that would incorporate OIE guidelines.

Commodities Eligible for Importation Under This Rule

We proposed to allow the importation, under certain conditions, of live bovines for any use born on or after a date determined by APHIS to be the date of effective enforcement of a ruminant-to-ruminant feed ban in the region of export; blood and blood products derived from bovines; and casings and part of the small intestine derived from bovines.

Although commenters addressed the provisions of our proposed rule regarding each of these commodities, the great majority of commenters focused on the potential importation of live bovines. We discuss below first the issues raised concerning live bovines, then the commenter issues regarding bovine blood and blood products and then those regarding the small intestine, including casings derived from the small intestine.

Those commenters who addressed the importation of live bovines discussed which bovines should be eligible for importation with regard to usage and date of birth, identification of the animals, verification that the animals are imported in compliance with the regulations, sealing of means of conveyance carrying the animals, and monitoring of imported cattle once in the United States.

Live Bovines

Date of Birth Eligibility

Issue: A number of commenters questioned how it will be determined whether a bovine intended for importation from Canada was born on or after March 1, 1999. The commenters stated that it will not be feasible to use dentition to determine the age of imported bovines, particularly in animals over 4 years of age. In many cases, said the commenters, Canadian veterinarians would have to accept producers' statements as the only source of verification of the age of the cattle. The commenters stated that the Canadian national cattle identification program was not made mandatory until 2002, and that it is still not mandatory in Canada to enter the entire birth date information into the database. Several commenters stated that it is nearly impossible to verify the actual age of older Canadian cattle, because the Canadian animal identification requirement applies only to cattle that leave the farm.

Response: The provisions in § 93.436(a)(3) and (b)(4) of this rule provide that bovines are not eligible for importation from a BSE minimal-risk region unless they are accompanied by certification that, among other things, the animals were born on or after March 1, 1999. As provided in § 93.405(a), such certification must be issued by a full-time salaried veterinary officer of the national government of the region of origin, or by a veterinarian designated by the national government of the region of origin and endorsed by a full-time salaried veterinary officer of the national government of the region of origin, representing that the veterinarian issuing the certificate was authorized to do so. It is incumbent upon the individual issuing or endorsing the certificate to ascertain whether an animal's date of birth can be determined with the accuracy necessary for such certification. As the commenters imply, dentition can be used to adequately determine the birth date of animals below about 4 years of age. Specifically, if an animal does not have all of its permanent teeth erupted, it is less than 4–5 years of age and therefore was born after March 1, 1999. However, if all permanent teeth are present and in wear, dentition does not provide an estimate of birth date specific enough to support certification that the animal was born on or after March 1, 1999.

We recognize that Canada's mandatory identification requirements did not take effect until 2002, and also that these requirements do not mandate that birth date information be entered into the database. However, we also note that provisions have been established for birth date information to be entered at any time, with appropriate documentation available to support such information. The number of these age-verification entries continues to increase, with over 3.5 million birth dates submitted to the Canadian Cattle Identification Agency (CCIA) database by late 2006 (CCIA, 2006). We recognize that it is likely that owners of some bovines may not be able to provide the documentation regarding an animal's birth date that is necessary for the required certification. In those cases, even if an animal was born on or after March 1, 1999, the animal would not be eligible for importation into the United States.

Permanent Identification of Country of Origin

Issue: Under the provisions of the proposed rule, cattle imported from Canada for other than immediate slaughter would have to be permanently and humanely identified before arrival at the port of entry with a distinct and legible mark identifying the exporting country. As proposed, acceptable means of permanent identification would include a mark applied with a freeze brand, hot iron, or other method; a tattoo applied to the inside of one ear of the animal, or other means of permanent identification if deemed adequate by the Administrator. For bovines imported from Canada, a brand would have to read ''CΛN'' and a tattoo would have to read ''CAN.''

A number of commenters addressed the issue of permanent identification of bovines as to the country of export. Several commenters recommended that the regulations require that such identification be applied with a hot-iron brand, and that a ''hair brand'' not be considered acceptable means of identification.

Response: A hair brand would not meet the requirements of the regulations, in that it could not be depended upon to provide permanent identification of the animal's country of export. However, we do not consider it necessary to list in the regulations all the forms of identification that would not be considered adequate to meet the intent of the regulations.

Issue: Several commenters addressed the requirement for permanent identification of the country of export as it would apply to bison. The commenters stated that a brand on the right hip or an ear tattoo are not the preferred alternatives, because of unnecessary stress on the animals and handlers. The commenters stated that a more humane means of bison identification, such as electronic tags (dual tags if necessary), could readily meet the need of tracking the origin of the bison and the movement patterns in Canada and the United States.

Response: The type of identification recommended by the commenters would provide the individual unique identification required by the regulations to facilitate traceback of the animal. Although the current regulations in § 93.436 require that such identification be provided by an official eartag of the country of origin, in August 2006 we have proposed to allow for forms of individual identification other than eartags.[10]

[10] We proposed (71 FR 45439–45444, Docket No. APHIS–2006–0026) to allow the individual identification to be provided with some form of identification other than an eartag. We solicited comments concerning our proposal for 60 days ending October 10, 2006. On November 9, 2006, we published a document in the **Federal Register** (71

Continued

However, we consider it necessary that the animal also be marked in some permanent and easily visible way as having been imported from a BSE minimal-risk region. In the case of bison from Canada, this would be a brand or other permanent ''CAN'' mark on the right hip, an ear tattoo with the letters CAN, or some other means of permanent identification if deemed adequate by the Administrator to humanely identify the animal in a distinct and legible way as having been imported from the BSE minimal-risk exporting region. The type of identification recommended by the commenters would not allow for easily visible identification of the country of origin.

Issue: A number of commenters disagreed that an ear tattoo would be an effective permanent means of identifying the country of origin of a bovine. The commenters stated that tattoos applied inside an animal's ear frequently become illegible after a period of time, and further, that tattoos may not be visible without catching the animal and examining it in a chute or other restraint system. The commenters recommended that, if tattoos are allowed, the regulations require that animals so identified be restrained and examined in the country of export to confirm that the tattoo is legible and permanent, and that such confirmation be indicated on signed documentation accompanying the animals to the United States.

Response: As discussed in our proposed rule, we agree that tattoos might not be the most readily visible means of identification of live animals in groups of animals. However, the purpose of requiring permanent identification of the animal's country of export is to expedite initial identification of an animal's country of export in the event the animal is diagnosed with BSE. Such a diagnosis cannot be confirmed on a live animal. Once the animal has been euthanized or has otherwise died, an ear tattoo will be an effective means of identification.

Issue: Several commenters stated that the APHIS Administrator should be required, upon request, to evaluate alternative means of permanent identification and, if they are functionally equivalent to the existing methods, be required to approve them.

Response: Paragraph (b)(2)(iii) of § 93.436 (of this rule provides for such approval by the Administrator of alternative means of permanent identification.

Issue: Several commenters recommended that a hot-iron brand on the right hip be required on all cattle crossing the U.S. border.

Response: As noted above, we proposed to require a permanent mark identifying the animal's country of origin only for cattle imported from a BSE minimal-risk region for other than immediate slaughter. We do not consider it necessary for cattle imported from a BSE minimal-risk region for immediate slaughter to be permanently identified as to country of export. Such animals will be moved to the slaughtering establishment in a group and the movement documentation accompanying such animals will be sufficient to provide ready identification of the animals' country of origin.

Issue: One commenter recommended that the regulations require that each animal entering the United States have permanent identification by which the animal could be traced back to its farm of origin.

Response: The commenter's recommendation refers to two types of identification that are already addressed by this rule. In this rule, paragraphs (a)(2) and (b)(3) of § 93.436 already require each bovine imported into the United States from a BSE minimal-risk region to be officially identified with an official eartag that provides unique individual identification that is traceable to the premises of origin of the animal. (As noted above, we have proposed to allow for forms of individual identification other than eartags). This rule requires, further, that no person may alter, deface, remove, or otherwise tamper with the official identification while the animal is in the United States or moving into or through the United States, except that the identification may be removed at the time of slaughter.

In addition to the individual identification that allows for traceback to the animal's premises of origin, the regulations also require that all cattle imported from a BSE minimal-risk region be permanently identified as to country of origin as described above. As discussed above, we do not consider it necessary for bovines imported for immediate slaughter to have this additional permanent identification as to country of origin.

Issue: One commenter requested that APHIS provide details of its protocol and criteria for ensuring that all live cattle imported from Canada have permanent identification maintainable until harvest.

Response: In § 93.436(b) of this rule, we give examples of means of permanent identification that would be considered acceptable. Acceptable types of permanent identification include a mark applied with a freeze brand, hot iron, or other method, or a tattoo applied to the inside of one ear of the animal. Any other types of permanent identification approved by the Administrator would have to be as effective as the examples cited in providing a permanent, distinct, and legible mark.

Individual Identification of Bovines

Issue: One commenter recommended that all cattle imported from Canada that are not moved directly to slaughter be required to be identified by a low frequency ISO compliant radio frequency tag placed in the left ear.

Response: As noted above, we have proposed to provide for forms of individual identification other than eartags, provided the identification can be used to trace the animal back to its premises of origin. We do not consider it necessary to mandate the use of any particular technology for meeting that criterion.

Issue: One commenter recommended that the regulations require that animals intended for importation into the United States from a country with a verified case of BSE be enrolled in a third-party source and age identification program that uses individual electronic identification devices.

Response: With regard to bovines intended for importation into the United States from a BSE minimal-risk region, the regulations already require that such animals be individually identified with unique identification that enables traceback to the premises of origin of the animal. Additionally, under this rule, bovines imported from Canada must be accompanied by certification issued or endorsed by the Canadian Government that the animals were born on or after March 1, 1999. After having evaluated the veterinary infrastructure of countries wishing to import animals and animal products into the United States, APHIS accepts official certification from those countries that commodities intended for export to the United States are in compliance with U.S. import regulations, just as U.S. trading partners rely on official U.S. certification that products exported from the United States meet the recipient country's requirements.

Sealing of Means of Conveyance

Issue: The regulations for importing live bovines from BSE minimal-risk regions have required that the bovines

FR 65758–65759, Docket No. APHIS–2006–0026) reopening and extended the comment period until November 24, 2006. We received a total of 10 comments by that date. We are considering the issues raised by the commenters and will address them in a separate rulemaking document.

be imported in a means of conveyance sealed in the region of origin with seals of the national government of the region of origin. In our proposed rule, we proposed to remove the requirement that bovines imported into the United States from BSE minimal-risk regions for other than immediate slaughter enter the country in sealed conveyances. We additionally proposed to remove the requirement that means of conveyance carrying bovines into the United States from minimal-risk regions for immediate slaughter be sealed in the region of export and to require instead that means of conveyance carrying bovines into the United States from Canada be sealed at the U.S. port of entry with seals of the U.S. Government.

Several commenters specifically supported the proposed change to require sealing of means of conveyance at the port of entry, rather than in the country of export.

One commenter stated that the proposed change to require sealing at the port of entry would allow APHIS less oversight of shipments and less opportunity to ensure that each animal in the shipment is accurately identified and of the appropriate age.

Several commenters recommended that APHIS specify which country or agency will be responsible for sealing a means of conveyance at the port of entry.

Response: We disagree that requiring sealing of means of conveyance at the port of entry will allow APHIS less oversight of shipments or cause decreased ability to ensure that the animals are being shipped in compliance with the regulations. The primary verification that the animals meet the requirements of the regulations will remain as it has been—i.e., certification by the country of export that the requirements of the regulations have been met.

However, we believe it is necessary to continue to require sealing of means of conveyance transporting bovines from Canada to immediate slaughter as a mitigative measure against diseases other than BSE. Cattle imported from Canada for immediate slaughter are not subject to tuberculosis and brucellosis testing requirements that would otherwise be applied to animals imported into the United States. Therefore, we would continue to require that such cattle be moved directly to slaughter in a sealed means of conveyance. (APHIS had been requiring such sealing at the port of entry even before our November 2003 proposal regarding BSE. However, the requirement for sealing was being done as APHIS policy, and was not specified in the regulations.)

As the commenters noted, this rule will remove the requirement that the sealing of the means of conveyance be done in the region of export. That requirement was included in the January 2005 final rule in response to comments from members of the public who expressed concern that requiring sealing at the port of entry could be harmful to the welfare and quality of the animals, due to delays at the port of entry. Under the provisions of this proposed rule, however, we do not expect undue delays of shipments at the port of entry. When a means of conveyance carrying bovines for immediate slaughter arrives at the U.S. port of entry, APHIS inspectors would confirm that the animals are as described on the certificate that must accompany the animals being imported, but generally would not require that the animals be offloaded from the means of conveyance. Therefore, requiring that the sealing of the means of conveyance take place at the port of entry would not cause measurable delay of the shipment. Further, sealing at the port of entry rather than in the region of export will reduce the time the animals will need to be contained in a sealed means of conveyance and reduce the likelihood that a seal will need to be broken between the time it is applied and the arrival of the animals at a slaughtering establishment.

We do not consider it necessary to specify which agency will seal means of conveyance at the port of entry with seals of the U.S. Government. In each case, the means of conveyance will be sealed by an APHIS employee.

Movement of Cattle for Other Than Immediate Slaughter

Issue: Some commenters who opposed allowing the importation from Canada of bovines 30 months of age or older urged the continuation of the current restrictions on movement in the United States of cattle moved to a feedlot, as well as continuation of the current requirements regarding sealing of conveyances carrying such animals and the requirement that the animals be accompanied by an APHIS-issued movement permit.

Response: The sealing and movement restrictions referred to by the commenters were included in our January 2005 final rule to ensure that live bovines from BSE minimal-risk regions were imported and slaughtered before the age of 30 months. At the time we published that final rule, we had not formally assessed the disease risk of allowing the importation of live bovines 30 months of age or older from BSE minimal-risk regions. Since that time, we have conducted an assessment of the risk of such importations, which we discussed in our January 2007 proposed rule and made available with that proposed rule. Our risk assessment indicates that there is a negligible likelihood of U.S. cattle being exposed to BSE and of BSE becoming established in the U.S. cattle population as a consequence of this rule.

Under this final rule, bovines from a BSE minimal-risk region will not have to be imported and slaughtered before they are 30 months of age. Therefore, it is not necessary to retain provisions in the regulations that were designed to help ensure that bovines imported from a BSE minimal-risk region are moved directly to a feedlot and then to slaughter as an easily identifiable group.

Request To Exempt Cattle for Immediate Slaughter From Birth Date Requirement

We proposed to require that live bovines imported from BSE minimal-risk regions have been born on or after the date recognized by APHIS as the date of effective implementation of a ruminant-to-ruminant feed ban in the region of export. We proposed to apply this requirement to all bovines imported from a BSE minimal-risk region, whether they are imported for immediate slaughter or for some other usage.

Issue: A number of commenters stated that the eligibility of cattle to be imported for immediate slaughter should not be dependent on when the animals were born. The commenters stated that such animals do not present a BSE risk justifying such a condition, and that APHIS has not demonstrated such a risk. Several commenters stated that the risk assessment APHIS conducted for the proposed rule is based on the premise that slaughter cattle will be eligible for importation from Canada no matter what their date of birth.

Additionally, commenters argued that requiring cattle moving directly to slaughter to have been born on or after March 1, 1999, would be inconsistent with the January 2005 final rule, which provided for the importation of beef derived from cattle of any age if requirements for the removal of SRMs are met. The commenters stated that allowing the importation of beef from cattle of any age while prohibiting the importation of cattle born before March 1, 1999, suggests that SRM removal can be accomplished more effectively in a foreign country than in the United States.

Commenters stated further that scientific evidence overwhelmingly demonstrates that the safety of food products derived from cattle is not dependent on the age of the animal, but on whether SRMs have been removed and disposed of. The commenters stated that complete control of cattle imported from BSE minimal-risk regions can be assured by requiring movement under Government seal, as we proposed. As an additional safeguard, stated the commenters, USDA regulations require that if an animal showing clinical signs of BSE risk is tested for the disease at slaughter, the carcass and parts derived from the animal cannot enter the food supply unless the animal tests negative for BSE.

Response: The commenters who recommended allowing the importation of cattle of any age from BSE minimal-risk regions, regardless of date of birth, raised several distinct issues in support of their recommendations. We agree with the commenters who stated that the removal and disposal of SRMs is the key factor in the food safety of products from bovines used for human consumption. However, the risk assessment conducted for the proposed rule specifically addressed the risk to animal health. The risk of transmission to U.S. cattle occurs when infectious tissues—most likely SRMs—inadvertently and/or in contradiction to U.S. feed regulations are rendered and included in ruminant feed and fed back to cattle. The risk of BSE-infected SRMs being present in the United States, while minimal, might be increased to some extent if cattle from BSE minimal-risk regions were allowed to be imported for immediate slaughter regardless of date of birth. The commenters are incorrect that our risk assessment did not take into account the date of birth of slaughter cattle. As described in the risk assessment, the requirement that animals for import be born after a certain date is one mitigation step that helps reduce the risk that infected animals will be imported, and therefore helps reduce the possibility that their SRMs will be incorporated into the ruminant feed chain in the United States.

Request for Restrictions on Use of Imported Cattle

Issue: As discussed above, we proposed to allow the importation of bovines from BSE minimal-risk regions for any use, provided the animals were born on or after the date recognized by APHIS as the date of effective implementation of a ruminant-to-ruminant feed ban in the region of export. This provision allows bovines to be imported for immediate slaughter or for some other usage, such as breeding or feeding and then slaughter. It differs from the regulations, that have been in place, which have limited the importation of bovines from BSE minimal-risk regions according to both the age of the animal and the intended usage of the animal in the United States (only those animals moved to immediate slaughter, or to one feedlot and then directly to slaughter, have been eligible for importation).

A number of commenters opposed the proposed removal of restrictions on how cattle imported from BSE minimal-risk regions may be used. Although most of these commenters did not object to the importation of cattle born on or after the date of effective implementation of a feed ban if the cattle were moved in a sealed means of conveyance directly to immediate slaughter, or to a single feedlot and then to slaughter, they expressed concern regarding the potential importation of cattle intended for breeding or as replacement animals in dairy herds.

Some of the commenters stated that BSE-infected cattle imported from BSE minimal-risk regions for breeding or herd replacement may not show clinical symptoms of BSE infection for many years, allowing BSE to incubate in U.S. cattle herds, and that an outbreak of BSE in the United States due to such imported cattle would be devastating to the U.S. dairy industry.

A commenter stated that, at the 95th percentile confidence for model simulations of Canadian BSE prevalence in the APHIS risk assessment, 180 new BSE cases occur over 20 years, and that 90 percent of these new cases would be expected to be in animals already infected with BSE when imported from Canada. Therefore, stated the commenter, almost all new cases of BSE expected in the United States will be from BSE-infected cattle imported from Canada and that any U.S.-born cases will be the result of importing breeding animals. Commenters stated further that, according to USDA, younger cattle are more susceptible to BSE and require less BSE-contaminated feed to become infected, and that since it is likely that younger cattle will be the ones imported for breeding or replacement purposes, the chance of introducing BSE into the United States from Canada is magnified.

Commenters stated that, although a series of risk mitigations are in place, these are different when it comes to animals imported for breeding versus those going directly to slaughter.

Response: The risk of BSE transmission to U.S. cattle occurs when infectious tissues—most likely SRMs—inadvertently and/or in contravention of U.S. feed regulations are rendered and included in ruminant feed and fed back to cattle. This risk is the same whether the animals were imported for immediate slaughter or were imported for breeding and are slaughtered later, and the series of risk mitigations or steps that prevent the transmission of BSE are the same, regardless of the purpose of the imported animal. While it is true that the level of infectivity in a BSE-infected bovine has been shown to increase as an animal ages, the amount of infectivity in, for example, a 7-year-old cow infected at 1 year of age would be the same at slaughter whether it was imported as a 1-year-old infected cow and used for breeding in the United States until it was 7 years old, or whether it was imported as a 7-year-old cull cow for immediate slaughter.

The U.S. feed ban prohibits the use of most mammalian protein in ruminant feed. The mammalian protein referenced could be derived from slaughterhouse offal—including SRMs—from animals imported for immediate slaughter, or from slaughterhouse offal derived from animals imported for breeding that have reached the end of their useful life in the United States. The protein could also be derived from the carcass of an animal imported for breeding that died other than by slaughter. The feed restrictions on the use of rendered protein derived from any of those scenarios would be exactly the same.

The commenters are correct that BSE-infected cattle may not show clinical signs for many years, due to the long incubation period for this disease as explained in the risk assessment. However, as long as the animals were born on or after March 1, 1999, the likelihood of any individual animal having been exposed to and infected with BSE, and subsequently releasing BSE infectivity into the United States, is negligible. There is no expected difference in the likelihood of BSE infection in two animals born on or after March 1, 1999, and raised in Canada, one imported into the United States as a young animal for breeding purposes and slaughtered at the end of its productive period, and one used as a breeding animal in Canada, and exported for immediate slaughter in the United States at the end of its productive period. Furthermore, BSE is not a contagious disease and does not spread by casual animal contact. Therefore, while an individual animal in a herd may be infected, that does not mean that other animals in that herd are at risk of becoming infected via spread from that animal.

Regarding the commenter's reference to our model simulation, we believe the commenter did not correctly interpret the results from the simulation. For sensitivity analysis 5 (pessimistic value for assumed BSE prevalence in Canada), the 95th percentile value for total infected cattle in the United States over a 20-year period amounts to 180 animals. The 95th percentile value for endogenous BSE-infected cattle over that period is 75, suggesting that 180 − 75 = 105 BSE cases are imported over that period, not 160 animals, as suggested by the commenter.[11]

Also, although our quantitative exposure models project that new cases of BSE in the United States would be transmissions secondary to the importation of infected cattle from Canada, we note that the United States has identified two indigenous cases of BSE. Given this fact, one cannot categorically state that any such cases identified ''will be from BSE-infected cattle directly imported from Canada.''

We explained in the risk assessment that there is an apparent age-susceptibility in regard to BSE, specifically noting that susceptibility in cattle declines with age. However, we disagree with the commenter's conclusion that, based on this fact, importing younger animals—specifically breeding animals as they are generally imported at less than 2 years of age—presents a magnified risk. Susceptibility is not the same as likelihood of being infected. As an example, the commenter's conclusion means that any animal born within the past 2 years would have a higher likelihood of being infected than an animal born 6 years ago. Given equal exposure a younger animal may be more susceptible to infection. However, as noted in the risk assessment, the overall prevalence in Canada is extremely low and BSE controls such as the feed ban are effectively enforced, so the chance that a given animal of any age had been exposed to an adequate amount of infectivity at a susceptible age i.e., the likelihood of being infected) is extremely small.

[11] Note that this estimate for the 95th percentile for imported cases (105) is approximate. The 95th percentile values for the total number of infected animals (180) and the number of endogenous cases (75) are estimated independently. In particular, all of the trials are first ranked according to the total number of endogenous cases, allowing identification of the 95th percentile value. The same is then done in order to identify the 95th percentile value for the total number of BSE cases. As a result, the 95th percentile values may be selected from different simulation trials. Because the number of endogenous cases influences the number of total cases, these two quantities are (imperfectly) correlated, however. That is, simulation trials that project a large number of endogenous cases also project a large total number of BSE cases. Hence, the actual 95th percentile value for the total number of imported BSE cases is likely to be similar to 105.

Monitoring of Imported Cattle

Issue: A number of commenters expressed concern that the proposed rule did not explicitly provide for a system to monitor the movement in the United States of cattle imported from BSE minimal-risk regions, specifically Canada. Some commenters limited their discussion to cattle 30 months of age or older. Commenters recommended that the regulations include an accounting procedure capable of monitoring the movement of imported animals from entry into the United States until slaughter, including changes in ownership of the animals.

Response: The regulations currently include movement conditions for bovines from BSE minimal-risk regions imported for other than immediate slaughter. Such bovines must be imported in a sealed conveyance and be moved directly from the port of entry to a feedlot identified on APHIS Form VS 17–130 or other movement documentation required by the regulations. The APHIS Form VS 17–130 or other movement documentation must identify the physical location of the feedlot, the individual responsible for the movement of the animals, and the individual identification of each animal. The bovines must remain at the feedlot until transported from the feedlot in sealed conveyances to a recognized slaughtering establishment for slaughter. While being moved to slaughter, the bovines must be accompanied by APHIS Form VS 1–27 or other movement documentation deemed acceptable by the Administrator, which must identify the physical location of the recognized slaughtering establishment, the individual responsible for the movement of the animals, the individual identification of each animal.

In our January 2007 proposed rule, however, we proposed to remove each of the above requirements from the regulations. The requirements described above were implemented solely to help ensure that cattle imported from BSE minimal-risk regions were slaughtered at less than 30 months of age—i.e., to preclude any diversion of the bovines to other uses in the United States that would result in a slaughter at some age 30 months or older.

We did not attempt, for that rulemaking, to assess the BSE risk associated with the importation of live bovines 30 months of age or older from a BSE minimal-risk region. However, as discussed in our January 2007 proposed rule and in this final rule, for this rulemaking we did assess the BSE risk associated with the importation of such animals, and concluded that the resulting BSE risk from the importation from Canada of bovines born on or after March 1, 1999—whether or not the bovines are 30 months of age or older when imported and slaughtered—would be negligible. Therefore, in our January 2007 proposed rule, we proposed to remove the requirement in § 93.436(a)(1) of the current regulations that live bovines imported from BSE minimal-risk regions be less than 30 months of age when ported into the United States and when slaughtered.

With the removal of the less-than-30-month age restriction on the importation of bovines from BSE minimal-risk region, any cattle imported from Canada—once certification has been presented to APHIS that the animals were born on or after March 1, 1999—will be able to be moved and handled in the United States in the same way as U.S.-born cattle.

Scientific evidence strongly indicates that BSE, unlike most transmissible diseases of cattle, is not transmitted from live animal to live animal. BSE is not a contagious disease and, therefore, is not spread through casual contact between animals. Scientists believe that the primary route of transmission requires that cattle ingest feed that has been contaminated with a sufficient amount of tissue from an infected animal. Therefore, even a BSE-infected bovine poses no BSE risk to other bovines unless those other bovines are fed BSE-contaminated materials from the infected animal. This route of transmission can be prevented by excluding potentially contaminated materials from ruminant feed, as is required in the United States.

If a bovine imported from a BSE minimal-risk region were diagnosed as being infected with the disease, from a biosecurity standpoint, it would not be necessary to know its record of movement while in the United States. However, we would proceed to trace the bovine back to its herd of origin, in order to identify birth cohorts of the animal. Traceback to the animal's premises of origin would be facilitated by the animal's unique individual identification, which is required under the current regulations and continues to be required by this rule, and which must be traceable to the premises of origin of the animal.

Issue: Several commenters stated that imports of bovines under the proposed rule should not be allowed until a mandatory cattle and premises identification program is implemented throughout the United States. At the minimum, stated one commenter, USDA should amend the National Animal Identification System policy to allow for and integrate with mandatory identification when required for animal health programs.

Response: As discussed in the preceding response, one of the requirements for the importation of bovines from BSE minimal-risk regions is that each animal have unique individual identification that is not removed from the animal, except at slaughter. Such identification is in addition to any cattle or premises identification that might be carried out under the U.S. national animal identification system, and would facilitate tracing an imported bovine that is determined to be infected with BSE to its herd of origin.

For the reasons discussed above, we are making no changes based on the comments regarding the monitoring and identification of cattle imported into the United States from a BSE minimal-risk region.

Feed Cohorts of BSE-Infected Animals

Issue: Several commenters stated that the regulations should specifically prohibit the importation from BSE minimal-risk regions of feed cohorts of BSE-infected cattle.

Response: We do not consider it necessary to add such a provision to the regulations and are making no changes based on the comments. Our definition of a BSE minimal-risk region in § 94.0 of the regulations includes a requirement that such regions conduct an epidemiological investigation following detection of BSE sufficient to confirm the adequacy of measures to prevent the further introduction or spread of BSE, and continue to take such measures. We described such investigations in our January 2005 final rule, as well as in the proposed rule and the risk analysis for that rulemaking. This description noted that CFIA conducts comprehensive epidemiological investigations, and one component of these investigations is to trace feed cohorts of confirmed BSE-positive cattle, in accordance with OIE guidelines. As a result of these traces, feed cohorts that remain alive are euthanized and tested for BSE. Therefore, since such animals would be euthanized, there is no need to specifically prohibit their importation.

Maternal Transmission of BSE

Issue: One commenter stated that APHIS' policy of destroying progeny of BSE-positive cows, in accordance with OIE guidelines, demonstrates that APHIS acknowledges there is some risk of maternal transmission of BSE. The commenter expressed the opinion that APHIS' conclusion expressed in the proposed rule that infectivity is unlikely to localize to the fetal blood is based on scant scientific evidence that remains equivocal. The commenter stated that APHIS does not prescribe any action to mitigate the additional risk pathway of the importation of pregnant cattle and fetuses from pregnant cattle.

Response: We disagree with the commenter and are making no changes based on the comment. In the proposed rule, we pointed out that, based on scientific and epidemiological data, maternal transmission of BSE is unlikely to occur at any appreciable level. In fact, maternal transmission can be ruled out in the majority of the cases born after the 1996 ban in the United Kingdom of all animal protein from livestock feed (DEFRA 2007b). Additionally, modeling studies using data obtained from the United Kingdom epidemic show that even if maternal transmission occurred at very small levels, it could not sustain an epidemic.

The commenter states that the OIE continues to recognize the risk of maternal transmission. However, we note that the 2006 OIE guidelines contain no specific recommendations regarding the destruction of offspring of infected animals as part of an epidemiological investigation. These recommendations were removed after recognition that the possibility of maternal transmission is very low. In addition, the 2006 guidelines with regard to trade from controlled risk regions for BSE contain no specific restrictions regarding progeny of positive animals. While the 2006 guidelines did contain a restriction for progeny of positive animals with regard to trade with undetermined risk regions (i.e., ''cattle selected for export * * * are not the progeny of BSE suspect or confirmed females''), this reference was removed in the 2007 OIE general session. Therefore, all restrictions on the trade in progeny of BSE-positive animals have been removed from the current OIE guidelines. APHIS believes the weight of the scientific information and scientific consensus reflected in the OIE international guidelines support the conclusion that maternal transmission of BSE is unlikely to occur at any appreciable level, and that specific regulatory measures are not necessary or warranted.

SRM Removal

Issue: One commenter stated that USDA regulations should require the removal of all SRMs from cattle imported from Canada at 30 months of age or older.

Response: FSIS regulations require the removal of all SRMs from cattle slaughtered in the United States, regardless of the country of origin of the cattle. Therefore, the action requested by the commenter is already included as a requirement in USDA regulations for any cattle 30 months of age or older that would be imported from Canada.

Ports of Entry

Some commenters addressed the regulations that have required that live bovines imported from Canada enter the United States only through ports of entries listed as authorized ports in § 93.403 of the regulations. Some commenters expressed concern about the ability of the ports to handle shipments from Canada, while other commenters requested that the list of authorized ports be expanded.

Authorized Ports of Entry

Issue: Several commenters stated that the proposed rule should not be implemented until sufficient personnel, quarantine facilities, and testing capabilities are available at the U.S.-Canadian border to monitor imports and detect suspect animals.

Response: APHIS regulations require that live ruminants imported into the United States from Canada come through the border ports listed in § 93.403(b) (except as provided in special cases in § 93.403(f)). APHIS lists ports in § 93.403(b) only after determining that they have sufficient personnel and facilities to accommodate importations of live animals from Canada.

Border Ports in Alaska

Issue: Several commenters noted that none of the border ports listed in § 93.403(b) are on the border of Alaska and Canada and requested that the regulations provide for such a border port.

Response: The volume and frequency of live animal imports through the ports listed in § 93.403(b) justifies making Federal inspectors available on a regular basis. As noted above, § 93.403(f) of the regulations provides for the designation by the Administrator of other ports in special cases as necessary.

Historically, the volume and frequency of imports of ruminants from Canada directly into Alaska has not made it resource-effective to provide the Federal inspectors for such importations on a regular basis. Imports of bovines from Canada into Alaska under this rule will continue to be handled by special arrangements on an as-needed basis.

For the reasons discussed above, we are making no changes based on the comments.

Blood and Blood Products

Paragraph (a) of § 94.18 lists regions from which imports of ruminants and ruminant products are prohibited or restricted because of BSE. Those regions in which BSE is known to exist are listed in § 94.18(a)(1); those regions that present an undue risk of introducing BSE into the United States because their import requirements are less restrictive than those that would be acceptable for import into the United States and/or because the regions have inadequate surveillance are listed in § 94.18(a)(2); those regions that present a minimal risk of introducing BSE into the United States via live ruminants and ruminant products and byproducts are listed in § 94.18(a)(3).

The requirements for the importation of blood and blood products from BSE minimal-risk regions have been the same as the requirements for importation of blood and blood products from other regions listed in § 94.18(a)—only serum and serum albumin have been eligible for importation. In our January 2007 proposal, we proposed to allow the importation of blood and additional blood products from BSE minimal-risk regions provided certain conditions were met regarding the health of the animal from which the blood or blood products were derived, or—in the case of blood collected from a fetal calf—the health of the dam; the method of slaughter; the process of collection of blood; and certification of compliance with the regulations.

We received comments regarding the importation of bovine blood and blood products from BSE minimal-risk regions. Most of the commenters addressing this topic expressed concern regarding such importation, while others sought clarification as to allowable methods of collection of bovine blood intended for importation as blood or blood products into the United States.

Issue: Several commenters stated that the regulations should not allow the importation of cattle blood for use as animal feed. One commenter stated that a number of studies have shown prion transmission through blood, that there is evidence that TSE diseases are capable of crossing the species barrier, that the EU has banned all animal protein except meat and eggs from use in feed for any animal that enters the human food chain and the United States should do the same, and that what the commenter referred to as the EC report on the assessment of BSE risk in the United States specifically condemned the practice of intraspecies recycling of ruminant blood and blood products. Some commenters specifically expressed concern about the potential use of blood protein as a milk replacement or as animal feed, and the production of spray-dried blood plasma or blood meal for use in feed.

Response: As we discussed in detail in our risk assessment, in experiments examining tissues from BSE-infected cattle, no BSE infectivity was demonstrated in cattle blood or any tested derivatives (EC SSC 2002). Also as discussed in our risk assessment, the Scientific Steering Committee of the European Commission concluded that the finding of BSE infectivity in the blood of sheep could not be extrapolated to BSE in cattle (EC SSC 2002a). Further, the available evidence indicates that TSEs in other species, when found in the blood, are localized primarily to the cellular fractions. Although BSE has never been detected in any bovine blood or blood product, we expect even further risk reduction after removal of cellular fractions in the preparation of the most commonly imported bovine blood commodities. In addition, the mitigations included in this rule help prevent contamination of bovine blood and blood products with infectious tissues such as SRMs. Thus, there is no reason to prohibit the importation of cattle blood for use in animal feed. (We note that FDA has responsibility for determining which materials may be used in animal feed.) Finally, as discussed in our risk assessment, infection with BSE via the oral route is less efficient than by subcutaneous or intramuscular injection. Given that we have concluded that there is a negligible risk for exposure to bovine blood and blood products via the injectable route, the same conclusion holds for exposure via the oral route.

Issue: One commenter cited a report (Castilla *et al.*, 2005) regarding the first detection of scrapie prions in hamster blood, using a biochemical technique called protein misfolding cyclic amplification (PMCA).

Response: APHIS is making no changes in response to this comment. The study cited by the commenter does not present evidence about BSE infectivity in bovine blood. The cited study presents a technique for the rapid amplification and detection of scrapie prions in hamster blood. The study is notable because the novel detection method could be useful in the development of diagnostic methods. Previously, only the prion concentration in the brain and some lymphoid tissues was high enough for detection by routine biochemical detection.

However, APHIS does not assume that finding the presence of abnormal prion protein in a given tissue, especially at low levels, is equivalent to demonstrating infectivity of the tissue. APHIS notes that there are very sensitive bioassays in live animals for determining the infectivity of various tissues, such as that for BSE using intracerebral inoculation of transgenic mice expressing the bovine PrP. These methods, recently used by authors of the cited study and others (Espinosa *et al.*, 2007; EC SSC 2002) have reliably determined that, unlike sheep, mouse, and hamster blood, bovine blood from BSE-infected animals does not have demonstrable infectivity.

Issue: One commenter stated that the reference APHIS used in its risk assessment in discussing the lack of TSE infectivity in bovine blood—the European Commission Scientific Steering Committee report, 2002—is dated.

Response: We note that, in addition to the 2002 European Commission Scientific Steering Committee report the commenter refers to, a more recently published study (Espinosa *et al.*, 2007) provides evidence of lack of TSE infectivity in cattle blood. The 2007 study found that orally inoculating asymptomatic cattle with BSE resulted in BSE infectivity restricted to the nervous system, Peyer's patches, and tonsils, as had been reported previously for clinically affected cattle. The study involved collection of tissue at 20, 24, 27, 30, and 33 months post-challenge. Infectivity in brainstem and sciatic nerve was detectable only after 27 months, whereas Peyer's patches and tonsils were positive at every time point tested. Blood, urine, spleen, and skeletal muscle were negative for detectable infectivity throughout the study, using the very sensitive bioassay, intracerebral inoculation of transgenic mice expressing the bovine PrP, to assess infectivity.

Issue: In order to guard against BSE contamination of blood intended for importation into the United States from BSE minimal-risk regions—or blood products derived from such blood—we proposed to require that the blood be collected in a closed system (in which the blood is conveyed directly from the animal in a closed conduit to a closed receptacle) or in an otherwise hygienic manner that prevents contamination of the blood with SRMs.

Several commenters stated that, because of current line speeds in beef slaughter facilities, a closed collection system is not practical and would be cost prohibitive for production of spray-dried blood plasma or blood meal. The commenters stated that industry associations of both renderers and spray-dried blood and plasma producers in the United States and Canada have developed and implemented guidelines and a code of practice designed to minimize the risk of contamination. One of the commenters stated that the manufacture of spray-dried blood products involves concentration of the liquid plasma with reverse osmosis or ultra-filtration, followed by atomization of the concentrated liquid in a heated drying container. According to the commenter, because the filtration and spray drying equipment will operate inefficiently if the feed liquid contains particulate material, a number of pre-filtration steps to remove particulate contamination are included in the production of spray-dried blood products. The commenter stated that the combination of the filtration system with manufacturing standards results in a system that meets the requirements of the regulations for collection ''in an otherwise hygienic manner that prevents contamination of the blood with SRMs.''

Several other commenters recommended that the regulations specifically provide for the adoption of alternative, less restrictive mitigation measures should the Administrator determine they are scientifically justified.

Response: As noted above, our proposed rule provided for collection in an otherwise hygienic manner that prevents contamination of the blood with SRMs, in lieu of using a closed system for the collection of blood. APHIS will determine whether an alternative process collects blood in a hygienic manner that prevents contamination of the blood with SRMs upon request by a party that such a determination be made. The request for determination must include a description of the proposed alternative method of collection.

Based on information received from the industry and an evaluation of industry capabilities, APHIS would consider the following to be an example of an acceptable alternative collection process at a slaughter facility: After the animal has passed ante-mortem inspection and is stunned, a long midline cut is made in the skin on the ventral part of the neck. A specially designed bucket—with two barbs that allow it to hang on the hide and that has been treated with anticoagulant prior to use—is inserted into the cut, so that the opening of the bucket, an oval-shaped area that conforms to the shape of the cut, is essentially inside the skin. As the animal moves down the line, another cut is made with a clean knife inside the skin opening, cutting the arteries and veins through the thoracic inlet for exsanguinations. The carcass travels down the rail while the blood drains. The bucket is mechanically removed by a conveyor at the end of this line. The conveyor carries the bucket into a separate room (separate from the kill floor), and empties the bucket into a vat with a screen to pick out any clots. The blood in the vat is then centrifuged, and the cells are piped to a dryer in another part of the plant, while the plasma is held in large refrigerated vats prior to transfer to another processing facility. The empty bucket travels through a pre-wash that removes any remaining blood, then through a disinfectant wash. Before reentering the collection process, the cleaned and disinfected bucket is treated with a measured amount of anticoagulant.

For the reasons discussed above, we are making no changes based on these comments to the proposed requirements for importing blood or blood products.

Small Intestine

The regulations in § 94.19 have required that meat, meat byproducts, and meat food products derived from bovines that have been in a BSE minimal-risk region be derived from bovines from which the SRMs and the small intestine were removed at slaughter. The regulations at § 95.4(g) have applied this same requirement to offal derived from bovines from BSE minimal-risk regions. Section 94.0 defines SRMs as ''those bovine parts considered to be at particular risk of containing the bovine spongiform encephalopathy (BSE) agent in infected animals, as listed in the FSIS regulations at 9 CFR 310.22(a).''

The regulations require removal of the entire small intestine, even though only part of the small intestine (the distal ileum) has been determined to be an SRM, to ensure removal of the distal ileum.

In our January 2007 proposed rule, we proposed to remove the requirements for removal of the entire small intestine. We proposed, instead, to require removal of 80 inches of the uncoiled and trimmed small intestine, as measured from the cecocolic junction, unless the processing establishment has demonstrated that an alternative method is effective in ensuring complete removal of the distal ileum. We explained that this proposed change is consistent with the definition of SRMs in the FSIS regulations at 9 CFR 310.22(a).

Some commenters who addressed the topic of the removal of the distal ileum and other parts of the small intestine requested that the regulations be made more stringent than at present, while others expressed the view that our proposed regulations were too restrictive.

Issue: Several commenters addressed our proposed change regarding removal of the small intestine. One commenter recommended not only that the regulations continue to require the removal of the small intestine, but that we require that the large intestine be removed as well. The commenter stated that the European Commission Scientific Steering Committee stated that, because slaughterhouse contamination of other intestinal areas with matter from the distal ileum cannot be avoided, it is prudent to remove the entire small and large intestines. Additionally, stated the commenter, the International Review Team (IRT) that issued a report to the U.S. Secretary of Agriculture in February 2004 called for the banning the entire intestine—from anus to pylorus—from human and animal food, from cattle of any age.

Response: The issue of how much of the intestines should be removed to ensure removal of the distal ileum to prevent contamination with the BSE agent was also raised in response to rulemaking documents published in the **Federal Register** by FSIS and FDA. The agencies' responses to those comments were published in interim final rules published in the **Federal Register** on September 7, 2005. (FSIS Docket No., 03–025IFA, 70 FR 53043–53050, and FDA Docket No. 2004N–0081, 70 FR 53063–53069). We concur with FSIS and FDA that, although the EU prohibits the entire intestine from use in food, the data we are aware of indicating BSE infectivity along the entire intestine is from other species, and may not represent the distribution of infectivity in cattle infected with BSE, as evidenced by studies with bovine tissues.

In cattle, infectivity has been found in the distal ileum in tissue assay from cattle experimentally given BSE (Wells *et al.*, 1994). In such cattle, positive Peyer's patches were found by immunohistochemistry only in the distal ileum, and in cattle with naturally occurring and experimental BSE, positive myenteric plexus neurons were found only in the distal ileum (Terry *et al.*, 2003). The duodenum of cattle experimentally given BSE has not demonstrated infectivity when tested by mouse bioassay and has been negative for the presence of abnormal prions when examined by immunohistochemistry during all stages of the pathogenesis of the disease (Wells, 1994). Few samples of jejunum have been tested, but those that have been tested were negative for the presence of abnormal prions when examined by immunohistochemistry (Terry *et al.*, 2003). In a bioassay of tissues from cattle with naturally occurring BSE, no infectivity was found in the splanchnic nerve, rumen, omasum, abomasum, proximal small intestine, proximal colon, distal colon, and rectum, or in the distal small intestine (EU SSC 2002).

The study by Terry and others indicated that the myenteric plexus of the distal ileum contained some abnormal prion protein in neurons (Terry *et al.*, 2003). Since the myenteric plexus extends throughout the small intestine, we acknowledge the possibility that infectivity might exist in the myenteric plexus of the jejunum or the duodenum. However, if infectivity in intestinal tissues (other than distal ileum) exists, it is below the level of detection by both mouse and cattle bioassay. Given the relative efficacies of these experimental modes of transmission compared to oral exposure at doses estimated to have occurred in the field, we conclude that intestine other than the distal ileum is highly unlikely to contain epidemiologically significant levels of infectivity, if any infectivity is present at all.

We do not agree that slaughterhouse contamination of other intestinal areas with matter from the distal ileum cannot be avoided. FSIS is responsible for ensuring the adequacy and effectiveness of procedures for removing the distal ileum in slaughterhouses. The FSIS regulations require that establishments develop, implement, and maintain written procedures for the removal, segregation, and disposition of SRMs, and that they incorporate these procedures into their HACCP (Hazard Analysis and Critical Control Point) plans, sanitation standard operating procedures, or other required programs (9 CFR 310.22(d)(1)). These procedures must ensure that SRMs, including the distal ileum, are completely removed from the carcass, segregated from edible products, and disposed of in an appropriate manner as prescribed by 9 CFR 314.1 and 9 CFR 314.3 (*i.e.*, used for inedible rendering, incinerated, or denatured). Regions wishing to export meat and meat products to the United States must follow processing practices equivalent to those of FSIS.

With regard to the IRT report referenced by the commenter, the recommendation for removal of the entire intestine, from anus to pylorus, was meant to apply in the United States only if the risk of BSE had not been determined to be minimal, based on aggressive surveillance. Aggressive surveillance conducted in both the United States and Canada indicate a very low prevalence of BSE. Therefore, the recommendation of the IRT for removal of the entire intestine of all cattle does not apply. As discussed above, scientific evidence does not support the designation of the entire intestine as an SRM.

Issue: Several commenters stated that the regulations should require that only the distal ileum be removed, rather than an additional 80 inches of small intestine. The commenters stated that APHIS has not established that it is necessary to excise so much additional intestine. At a minimum, stated the commenters, the regulations should allow the Administrator to approve effective alternatives in ensuring complete removal of the distal ileum.

Response: As discussed in our proposed rule, removal of the distal ileum as well as an additional portion of the small intestine is consistent with FSIS and FDA requirements to ensure removal of the distal ileum. APHIS concurs with FSIS and FDA that, unless demonstrated otherwise, to ensure complete removal of the distal ileum, it is prudent to require removal of 80 inches of the uncoiled and trimmed small intestine as measured from the cecocolic junction. We concur that this standard will ensure removal of the distal ileum despite differences in length of the intestinal tract or its segments between breeds or variations from animal to animal of the same breed. However, we recognize, as do FSIS and FDA, that alternative means of ensuring removal of the distal ileum may exist, and current APHIS regulations provide for such alternative means.

For the reasons discussed above, we are making no changes based on these comments to the proposed requirements regarding removal of part of the small intestine.

Bovine Tongue

Issue: One commenter stated that USDA's assumption that removal of a fraction of the small intestine and the tonsils removes any potential for transmission to humans is unjustified, given that APHIS has not evaluated the potential for contamination of tongue with tonsil tissue. The commenter also stated that APHIS claims this possibility is eliminated by current slaughter techniques, and stated further that such an assumption is contradicted by facts (i.e., scientists who examined over 250 bovine tongues intended for human consumption found tonsillar tissue in the vast majority—in some cases, ''even after the most rigorous trimming of the root of the tongue'' (Wells *et al.*, 2005). The commenter stated that APHIS cannot simply assume this risk away by stating, without record support, that it is eliminated.

Response: We are making no changes based on the comment. Wells *et al.* (2005) state the following:

> However, the trace level of infectivity so far detected in tonsillar tissue and the localization of the lingual tonsillar lymphoid tissue, together with the current SRM legislation for the removal of tonsil from cattle carcasses and the low and diminishing prevalence of BSE in the UK suggest that the risk of human exposure to infected tonsil is now remote. It seems likely that under these circumstances any additional trimming of the tongue would result in an immeasurable reduction in the risk. * * *

In other words, the study cited by the commenter does not present a strong case for additional risk measures. The study, in fact, indicates the opposite conclusion.

Moreover, even before the SRM requirements were implemented in January 2004, FSIS did not consider tonsil to be edible tissue—it was previously required to be removed. As noted in FSIS Notice 50–04:

> In the preamble to 9 CFR 310.22, FSIS stated that tonsils of all livestock species, including cattle, were already required to be removed and were prohibited for use as ingredients in meat food products under 9 CFR 318.6(b)(6). The accepted practice for removing the tonsils from livestock has been to remove all visible tonsils. In cattle, this includes separation of the palatine tonsils and lingual tonsils from the tongue (in establishments that harvest the tongue for human food) by a transverse cut caudal (just behind) the last vallate papillae. * * * FSIS expected that establishments would continue to remove tonsils from cattle in accordance with the procedures that they had implemented to comply with 9 CFR 318.6(b)(6) * * *. Establishments that slaughter cattle should have been following these practices before tonsils were designated as SRMs. (FSIS, 2004).

APHIS' quantitative exposure model included an update that acknowledged the potential infectivity in tonsils and clearly added these as an SRM, with the acknowledgment that they could still be potentially available for human consumption. In fact, the output tables from the model runs show the potential ID_{50}s derived from tonsils and available for human consumption over the 20-year period of the analysis. These values are obviously very low, ranging from

0.026 ID_{50}s in the base case scenario to 0.16 ID_{50}s in sensitivity analysis 6 (in which all uncertain parameters were simultaneously set to their corresponding pessimistic level). Such very small values are not surprising given the low likelihood of infectivity in the tissue itself. These possible exposure routes were therefore explicitly modeled and not ''assumed away.'' Moreover, although our model predicts a vanishingly low level of possible human exposure via tonsils, we have not stated that the risk is ''eliminated,'' as was suggested in the comment.

Issue: A number of commenters urged that, before this rule is implemented, a plan should be in place for the removal and mitigation of any potential risk factors that might arise from the introduction of the BSE agent into the United States because of the importation of a BSE-infected cow.

Response: We are making no changes based on the comments. The safeguards in the United States regarding any BSE-infected cow that might be imported from a BSE minimal-risk region are the same that are in place to deal with a BSE-infected cow of any source, including any of U.S. origin that might be detected. These mitigations are simulated in the quantitative exposure model used in the risk assessment for this rule.

The primary animal-health mitigation measure is the feed ban implemented by the FDA in 1997. This feed ban is the most important measure to prevent the transmission of disease to cattle. In addition to the regulatory restrictions imposed by the feed ban, other industry practices—such as rendering processes that inactivate a significant proportion of BSE infectious agent present in raw material—and biological processes—such as age susceptibility to infection—also help to mitigate the transmission of disease to animals.

Public or human health protective measures are maintained by both the FSIS and the FDA. The most important public health protective measure is the removal from the human food supply of SRMs. Other controls include prohibiting air-injection stunning of slaughter cattle; requiring additional process controls in advanced meat-recovery systems; forbidding the use of mechanically separated meat in human food; and prohibiting nonambulatory disabled cattle from the human food chain. Additionally, protection from BSE and other disease is achieved through ante-mortem inspection of slaughter cattle and the exclusion of animals with any clinical signs of neurological disease or other abnormalities.

If a BSE-positive bovine were identified in the United States, APHIS would lead an epidemiological investigation that would include the tracing of birth cohorts of the infected animal. Birth cohorts are those animals that could have been exposed to the same feed as the infected animal, and include those bovines that were born on the same premises as the infected animal during the 12-month period immediately before the birth of the infected animal or during the 12-month period immediately after the birth of the infected animal. They would also include other bovines raised on the premises at the time the infected animal was there. Any birth cohorts located would be prevented from entering the human or animal feed chains. In addition to the APHIS epidemiological investigation, FDA would conduct an extensive feed investigation to help determine the potential source of the infection.

With regard to commodities eligible for importation from BSE minimal-risk regions under this rule, we have concluded that such commodities can be imported with a negligible BSE risk to the United States.

The Role of States

Several commenters discussed the role U.S. States should play regarding bovines imported from BSE minimal-risk regions.

Issue: Commenters stated that CFIA and APHIS should provide the State veterinarian in the U.S. State that is receiving such bovines with all animal health and identification documentation before the animal is imported. Commenters requested further that the regulations require all importers of cattle over 30 months of age from BSE minimal-risk regions to report all movements of the animal to the department of agriculture of the recipient State before the animal is moved into or through the State.

Response: As noted above, the purpose of the current APHIS regulations with regard to BSE, and those in this rule, is to allow the importation into the United States of commodities that can be imported with a negligible likelihood of the BSE exposure and establishment in the U.S. cattle population as a consequence of eligible imports from Canada. We do not consider the extensive recordkeeping and paperwork requirements suggested by the commenters to be warranted or justified by science and are making no changes in response to the comments.

Issue: Commenters recommended that APHIS authorize each State Veterinarian to ensure that the animal health and identification requirements of the APHIS regulations are met, and recommended further that, in the event the State determines noncompliance with the APHIS regulations, USDA support the enforcement actions of the State officials.

Response: APHIS has a historical and ongoing working relationship with State animal health officials to protect livestock in the United States from both foreign diseases and diseases endemic to the United States. This ongoing cooperation has enabled the United States to protect this country's livestock from a variety of diseases, including BSE. It has not been necessary to specify this working relationship in the APHIS regulations, and we do not consider it warranted to do so for any one disease. However, APHIS emphasizes that it values highly its cooperative efforts with State animal health officials and welcomes a continuing exchange of information and support in carrying out our mutual missions.

Potential Economic Effects of the Proposed Rule

A large number of commenters addressed the potential economic effects of the proposed rule. Most of these commenters expressed concern that the proposed rule would have an unacceptable negative impact on U.S. entities. Some of the commenters took issue with the economic analysis we conducted for our proposed rule.

Issue: Many commenters recommended that APHIS withdraw or restrict implementation of this rule because of its potential negative economic effects on the U.S. livestock and livestock product industry, due to the potential significant influx of cattle from Canada over a short period of time. A number of commenters requested that the rule not take effect until USDA has developed and implemented an orderly market transition plan to reduce the negative effect of the rule on U.S. cattle producers. One commenter stated that such a plan should include gradually accepting imports, so as not to overload the U.S. cattle supply and crash those markets. Further, commenters recommended that APHIS delay implementation of the rule until all U.S. export markets that were closed due to the December 2003 detection in an imported cow in Washington State are reopened.

Response: APHIS does not have the statutory authority to restrict trade based purely on its potential economic impact, market access effects, or quantity of products expected to be imported. Under the Animal Health Protection Act, the Secretary of Agriculture may prohibit or restrict the importation or entry of any animal or article when the Secretary determines it is necessary to prevent the introduction or dissemination of a pest or disease of livestock. This authority has been delegated to APHIS.

We note that this rule, and our January 2005 final rule, do not make any commodities eligible for importation from Canada that were not already allowed importation prior to May 2003, when a BSE-infected cow was diagnosed in Canada. One difference between the current situation and pre-May 2003, however, is that certain of the commodities that are now eligible for importation, or that will become eligible when this rule becomes effective, are subject to risk mitigating importation conditions appropriate to the fact that BSE has been detected in Canada and that we consider that country a minimal-risk region for BSE. As noted above, both Canada and the United States have been classified as controlled risk countries for BSE under the OIE guidelines. Additionally, even under these rules, there are some commodities (e.g., cattle born before March 1, 1999) that continue to be ineligible for importation into the United States. Nevertheless, this rulemaking and our January 2005 final rule represent to a great extent a return to trade patterns that existed between the United States and Canada for many years previously. As discussed in the January 2007 proposal for this rule, in this final rule, and in the risk assessment for this rule, we have determined that the commodities eligible for importation from Canada under this rulemaking can be imported into the United States under the conditions specified with a negligible BSE risk to the United States.

With regard to exports markets that were closed to U.S. beef following the December 2003 detection of BSE in a cow of Canadian origin in Washington State, U.S. Government agencies are actively negotiating with trading partners to reestablish our export markets. After the 2003 detection of an imported BSE-infected cow in Washington State, many of the 114 nations that imported U.S. beef banned our beef and live animals, despite the apparent lack of scientific basis for such measures. The efforts of multiple U.S. Government agencies have succeeded in removing bans in over half of those markets, including our largest export market, Japan. U.S. Government agencies continue to work to reopen or further open markets where restrictions remain; the results of these negotiations are posted on the USDA APHIS Web site (*http://www.aphis.usda.gov*).

Issue: Some commenters took issue with the economic analysis that we conducted for our January 2007 proposed rule. One commenter stated that the economic analysis ignored any multiplier effects (i.e., the impact of a change in the level of economic activity in one sector on other sectors of the economy and on households in terms of employment and income) that would come from the broader economic impacts on the beef wholesale sector.

Response: We used the multi-sector model in our economic analysis to examine impacts for the major vertically linked marketing channels for beef and other livestock products. We estimate consumer surplus for the beef sector will increase by 1 to 1.3 percent at the retail level in scenario 3 of the economic analysis. Indirect downstream effects on income and employment are not modeled; however, we do not believe APHIS is required to analyze the impacts of regulation on every sector of the economy that may be indirectly affected by these changes. As in many regulations, opportunity costs imposed on one sector of the economy are often passed on to other sectors of the economy. We anticipate that there may be indirect economic benefits to communities where, for example, cull cattle imported from Canada result in increased slaughter plant employment. In other communities, there may be income and employment losses due to reduced spending by producers who face a fall in prices for cull cattle. These impacts are expected to be small on a national basis, although they may show some geographic concentration. Overall, the effects of this rule are expected to reflect a return to trade circumstances similar to those that existed prior to May 2003.

Issue: One commenter indicated that APHIS acknowledged the sensitive nature of the results of the economic analysis based on the parameters (elasticities) used to drive the economic model and requested public comment on those parameter assumptions. The commenter stated that APHIS should have done a literature search for studies that report on these parameters and should have made those reported parameters available, in order to provide policy analysts with fuller knowledge to assess the accuracy of the results reached by APHIS.

Response: APHIS agrees that this would be useful information to provide for those interested in the impact analysis. The two tables that follow summarize our overview of demand and supply elasticities estimated or used in published research. The referenced sources are identified in a footnote following the tables.[12] The elasticities we use in the economic analysis fall within a reasonable range of the elasticities found in these various sources.

[12] Arnade, C.,and K. Jones. ''Modeling the Cattle Replacement Decision.'' Paper prepared for presentation at the *American Agricultural Economics Association Meeting,* Montreal, Canada, July 27–30, 2003.

Brester, G.W., J.M. Marsh, and V.H. Smith. ''The Impacts on U.S. and Canadian Slaughter and Feeder Cattle Prices of a U.S. Import Tariff on Canadian Slaughter Cattle.'' *Can. J. Agr. Econ.* 50(March 2002), pp. 51–66.

Brester, G.W. ''Estimation of the U.S. Import Demand Elasticity for Beef: The Importance of Disaggregation.'' *Rev. Agr. Econ.* 18(January 1996), pp. 31–42.

Brester, G.W., and M.K. Wohlgenant. ''Estimating Interrelated Demands for Meats Using New Measures for Ground and Table Cut Beef.'' *Amer. J. Agr. Econ.* 73(November 1991), pp. 1182–94.

Marsh, J.M. ''Impacts of Declining U.S. Retail Beef Demand on Farm-Level Beef Prices and Production.'' *Amer. J. Agr. Econ.* 85(November 2003), pp. 902–13.

Marsh, J.M. ''Estimating Intertemporal Supply Response in the Fed Beef Market.'' *Amer. J. Agr. Econ.* 76(August 1994), pp. 444–53.

Marsh, J.M. ''USDA Data Revisions of Choice Beef Prices and Price Spreads: Implications for Estimating Demand Responses.'' *J. Agr. and Res. Econ.* 17(December 1992), pp. 323–34.

Wohlgenant, M.K. ''Demand for Farm Output in a Complete System of Demand Functions.'' *Amer. J. Agr. Econ.* 71(May 1989), pp. 241–52.

DEMAND ELASTICITIES

	Feeder Placements	Retail Beef	Replacements	Nonfed Beef[a,b]	Fed Beef[b]	Beef[b]	Slaughter Cattle[c]
Arnade and Jones (2003)							
Short Run			-2.300				
Long Run			-2 770				
Brester, Marsh, and Smith (2002)							-1 790
Brester (1996)						-0.700	
Brester and Wohlgenant (1991)				-2 543	-1.155		
Marsh (2003)		-0.670					
Marsh (1994)							
Short Run	-0 255						
Intermediate Run	-0 887						
Long Run	-2 760						
Marsh (1992)							-0.650
Wohlgenant (1989)							-0 760

[a]Nonfed beef is defined as beef from bulls, cows, and grass-fattened steers and heifers.

[b]This is a compensated elasticity.

[c]This is an import demand elasticity

SUPPLY ELASTICITIES

	Fed Marketing	Slaughter	Feeder	Calves	Cull Cows
Arnade and Jones (2003)					
Short Run				0.391	0.430
Long Run				0.417	0.460
Marsh (2003)					
Short Run			0.220		
Long Run		0.593	2.820		
Marsh (1994)					
Short Run	-0.170				
Intermediate Run	0.606				
Long Run	3.240				

Issue: One commenter stated that the type of ''welfare'' analysis APHIS used in its economic analysis is invalid because it relies upon the unscientific concept of interpersonal utility comparison.

Response: We disagree. Our economic analysis does not attempt to make interpersonal utility comparisons. We recognize that an additional dollar of income provides a different level of utility to every individual. APHIS uses techniques that are quite standard in welfare and trade economics; we estimate changes in consumer and producer surplus that may result from projected changes in cattle and beef imports from Canada under different scenarios. For a given transaction, consumer surplus refers to the value that the purchase of the good provides the buyer over and above its price. Producer surplus refers to the value that the sale of the same good provides the seller over and above the lowest price at which he would have been willing to sell it.

The estimated changes in welfare and prices are generalized across all entities that would take part in transactions concerning the particular commodity at hand, such as the purchase and sale of cull cattle. We make no attempt to evaluate impacts on income distribution or the utility gained or lost by individual market participants. In a transaction, the buyer and the seller both gain utility, as individually determined, compared to their next best alternatives. Otherwise the transaction wouldn't occur. But for some entities, the ''gain'' in utility may be, in fact, a smaller welfare loss than the participant anticipates would be incurred without the transaction (e.g., selling a cull animal rather than keeping it past the optimal point of sale, even though the price has declined). Commodity-wide changes in welfare (changes in consumer and producer surplus) reflect the changes in utility across all buyers and sellers of the commodity.

The common measure of value and, therefore, of changes in welfare is, of course, the dollar. Our analysis appropriately uses changes in consumer and producer surplus, expressed in dollars, to evaluate net benefits of this rule and other scenarios considered. As pointed out in the Office of Management and Budget's Circular A–4, a distinctive feature of benefit-cost analysis is that both benefits and costs are expressed in monetary measures, which allows a common measure for evaluation of different regulatory options.[13]

Issue: One commenter stated that the economic analysis for the proposed rule is invalidated by its assumption that import numbers will be exogenous, rather than determined within the context of a dynamic North American livestock market.

Response: APHIS disagrees. We agree that the North American livestock market is a dynamic system, with the interplay of changing prices and changing supply and demand quantities continually redefining market equilibria. The projected imports from Canada may be exogenous to the particular model we used to estimate domestic impacts; however, they are derived from USDA baseline projections and anticipated market changes that reflect the fluidity of interacting markets. In other words, the impacts were not modeled as external exogenous shocks, but rather as rational responses to changing market conditions. We also note that every model is an abstraction from reality that relies upon selected exogenously determined values and parameters. Our import projections are

[13] Office of Management and Budget, Circular No. A–4, Regulatory Analysis, September 17, 2003. *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*

well based in theory and market considerations. Imports of Canadian cull cattle will be newly reestablished by the rule, and effects for the other modeled commodities will derive from the resumption of the cull cattle imports. The principal model we use to evaluate expected effects of the rule is a net trade model, and its operation is driven by projected changes in net trade.

Issue: One commenter stated that our economic analysis overstates consumer benefits associated with the availability of cull cattle for slaughter in the United States, because it does not adequately account for substitution among the modeled products in both the United States and Canada.

Response: Consumer welfare benefits are expected to be gained under the rule by buyers of processing beef at the wholesale level. Lean processing beef from cull cattle and trimmings from fed beef are complementary goods that are combined to produce ground beef. At the level of the retail shopper, there is a degree of substitution between ground beef and fed beef cuts, but this relationship is not expected to significantly influence the estimated consumer benefits attributable to the rule.

As part of the economic analysis for the final rule, we simulate substitution among livestock products in response to relative price changes. The simulations yield measures of consumer welfare changes at the retail level. Results of this analysis indicate that, with the rule under scenario 3 as discussed in our economic analysis and in the summary of that analysis in this document (entry of Canadian cattle born on or after March 1, 1999, and resumption of imports of beef from Canadian cattle slaughtered at 30 months of age or older), consumer surplus for the beef sector at the retail level will increase by 1 to 1.3 percent compared to a 2006 baseline.

Issue: One commenter stated that, based on normal culling rates, the January 2007 herd size, the modernization and expansion of Canada's slaughter plants, and the increased use of Canadian beef in the Canadian domestic market, the number of animals that might be available for export is considerably lower than the number estimated by USDA. The commenter calculated that the number of older, age verified, beef and dairy animals that might be eligible for export would total about 471,000 head annually, consisting of approximately 250,000 dairy cows, 154,000 beef cows, and 67,000 bulls. The commenter noted that the estimate of 471,000 head should be viewed as an upper bound and that, if confirmation of an animal's age proves to be a complex procedure, that number would be reduced.

One commenter stated that, in assessing the potential economic effects of this rulemaking, the use of any historical references regarding trade flows and regional basis levels to assess potential impacts are not likely to be of much use, due to changes in cattle usage. The commenter stated that the vast majority of Canadian cull cows and bulls will be converted into beef in Canada, and, after subtracting the elimination of the supplemental tariff rate quota (TRQ) supplies, the balance could be exported to the United States depending on the influence of the exchange rate. (''TRQ'' is the total annual quantity of a commodity that can be imported at a lower tariff rate, excluding imports from NAFTA countries. Canada's supplemental TRQ beef supplies were quantities of beef above the tariff rate quota that were allowed by Canada to enter at the lower tariff rate. In eliminating supplemental TRQ certificates—that is, by not allowing additional beef imports at a lower tariff rate, Canada is relying to a greater extent on domestic production and less on imports.)

Response: We have considered these observations carefully and reassessed the proposed rule import projections and, as a result, have revised our economic analysis based on a smaller quantity of cull cattle projected to be imported from Canada. Although the modernization and expansion of Canada's slaughter plants and increased reliance on Canadian beef in the Canadian domestic market will tend to dampen cull cattle imports from that country, we expect the major reason for a smaller number of imports will be the requirement that the cattle be verified as having been born on or after March 1, 1999. In the preliminary regulatory impact analysis (RIA) we conducted for our January 2007 proposed rule, we projected that cull cattle imports from Canada in 2008, for example, would total 657,000 head (586,000 cows and 71,000 bulls and stags). In scenario 3 of the final RIA, however, we are projecting cull cattle imports in 2008 totaling 75,000 head (63,000 cows and 12,000 bulls and stags). We believe that the commenter who estimated that there would be approximately 471,000 older cattle eligible for import from Canada, and who acknowledged that number was an upper bound estimate, did not fully consider the extent to which the age verification requirement would reduce the number of eligible cattle. Of the cull cattle that might be imported by the United States if there were no age restriction and no age verification requirement, only about one-fourth are expected to be eligible for importation in 2008 under this rule, and only about one-half may be eligible by 2012.

Issue: One comment stated that APHIS did not provide an explanation in its economic analysis for the different percentages of cattle over 30 months of age and of such cattle plus beef from cattle over 30 months of age assumed to displace other processing beef imports.

Response: We agree that it is reasonable to expect, for all of the scenarios set forth in the economic analysis, that a consistent percentage of Canadian imports across the scenarios would displace other imports. We have revised the final RIA accordingly. In this final rule, we estimate that 25 percent of cull cattle imports from Canada (scenarios 1 and 2 in our economic analysis) and 25 percent of cull cattle and beef derived from cattle 30 months of age or older (OTM beef) from Canada (scenario 3 in our economic analysis) will displace U.S. processing beef imports from elsewhere. The estimate of 25 percent comes from simulations of the multi-sector model and takes into account interactions of the processing beef sector with the beef cattle and dairy cattle sectors. The model allows cattle prices to adjust to an increase in beef imports from one source (in this case, cull cattle and OTM beef imports from Canada), spreading the market response across both beef and cattle. This interaction dampens the beef price decline and reduces the amount of displacement below that would be expected to occur by considering only the market for processing beef. We also examine the sensitivity of the impacts to changes in the quantities of cull cattle and processing beef imported from Canada that displace processing beef from elsewhere: The RIA presents results assuming 50 percent of the imports from Canada displace imports from elsewhere as well as results assuming none of the imports from Canada displace other imports.

Issue: Several commenters, in addressing the potential economic effects of this rulemaking, stated that the time of year a final rule would go into effect is an extremely important variable in assessing its initial economic impact. One commenter stated that U.S. cull cow marketings are highly seasonal because the majority of calves are born in the spring and the decisions to retain cows are generally made during the fall. As a result, the months of October, November, December, and January are typically lowest for cull cow prices. Another commenter stated that implementation of the rule in the fall of

2007 (post-weaning) would likely result in a larger impact on U.S. cull cow prices in the very short term.

Response: We agree with the commenters that, in the short term, the timing of the resumption of imports of cull cattle and processing beef from Canada could have an impact on producers' monthly revenues. Historically, cull cow slaughter in the United States is highest in the months of October, November, December, and January. As the commenters noted, because of this, cull cow prices are typically lower in these months. Limited data prevent analysis on a monthly basis of price changes in response to projected cull cattle imports from Canada. However, we do acknowledge that, because of the larger number of cull cattle marketed per month, during October through January, a slight price decline during this period would result in larger total monthly revenue losses for U.S. producers than during the other months of the year. This seasonal difference in monthly revenue losses would not be large on an annual basis.

This outcome is demonstrated in research conducted at Montana State University (Brester *et al.*, 2007). This study examined effects of additional cull cattle slaughter using two scenarios: One in which Canadian cull cattle imports return to pre-2003 levels and do not displace beef imports from other countries, and a second in which 50 percent of cull cattle and processing beef imports from Canada displace beef imports from Uruguay. The changes in U.S. cull cattle prices estimated for these two scenarios are declines of $1.55 per cwt and $0.78 per cwt, respectively. The average of the price changes reported in the Montana State study, $1.17 per cwt (2.5 percent of the 2006 average U.S. cull cow price of $47.56 per cwt), would correspond to 25 percent of imports from Canada displacing processing beef imports from other countries, which is the percentage share used in the economic analysis for this final rule.

As reported by Brester *et al.* for the period, 2000–2006, monthly cull cattle sales averaged 488,000 head, October through January, compared to an average of 434,000 head per month, February through September. Based on the Montana State study results, a 25 percent level of displacement would correspond to a decrease in total monthly revenue for cow-calf producers of $5,956,500, October through January, and $5,297,000, February through September. In other words, there would be an additional revenue loss of $659,000 (12 percent) per month, October through January.

We project in our economic analysis a baseline for beef and dairy cow slaughter in 2008 totaling 5,084,000 head, and a nominal 2008 price of $54.19 per cwt. Based on an average live slaughter weight of 1,050 pounds, total baseline gross revenue from the sale of cull cows in 2008 would be $2.89 billion. The increase in producer losses because of increased cull cattle sales occurring during the months of October through January, rather than during the months of, February through September, based on the Montana State study results, would total less than 0.1 percent of the projected baseline annual revenue from cow slaughter.[14]

While we recognize that the timing of the resumption of cull cattle imports from Canada may influence the size of the short-term impacts for producers, differences in revenue losses due to the timing of the implementation of the rule are considerably smaller when considered on an annual basis. Our analysis is in terms of annual cattle import projections and, therefore, yields annual price and welfare effects. The within-year distribution of effects is smoothed in the annual estimate.

Issue: Many commenters addressed the issue of the potential economic impact on U.S. cattle producers should a bovine of Canadian origin be diagnosed in the United States as BSE-infected. A number of the commenters expressed general concern regarding such a potential impact, and suggested that APHIS' analysis of the potential economic effects of the proposed rule was incomplete because it did not consider such impacts. Commenters stated that such impacts have been large in other countries and could overwhelm the effects estimated by APHIS if a BSE-infected animal imported into the United States under the provisions of this rule caused the spread of BSE in the United States, and that a comprehensive economic analysis should include consideration of the demand reactions that would be triggered by identification of additional Canadian-born BSE cases in the United States, even at the low levels projected in APHIS' risk assessment.

Other comments stated that the cost associated with the projected importation of up to 160 BSE-infected cattle into the U.S. (based on APHIS' estimate for the 95th percentile of confidence) over 20 years, or the projected 2 to 20 U.S.-born infected cattle, should have been considered. Several commenters expressed concern that the existence of 21 to 180 cases of BSE-infected animals could substantially undercut demand for beef, as it has done in Europe, or dairy, if the public begins to identify BSE with the older dairy breeding stock that are most at risk of manifesting the disease.

A number of commenters expressed concern regarding the potential economic impact of the detection in the United States of a Canadian-born BSE-infected cow on U.S. export markets. Commenters stated that the reaction of the beef markets to the first U.S. case of BSE—despite that cow's being of Canadian origin—demonstrates the very substantial potential costs to U.S. cattle industries of introducing even a limited number of infected animals into the U.S. herd. Commenters stated that APHIS should examine such potential economic impacts.

Response: Expected economic impacts if new cases of BSE were to occur in the U.S. cattle population because of the rule are addressed in the consequence assessment portion of the risk assessment we conducted for this rulemaking. The consequence assessment notes that effects of BSE include a variety of costs. Some costs are long-term; others are one-time costs uniquely associated with new cases.

The major long-term cost for the United States due to the diagnosis of BSE in a cow of Canadian origin in Washington State in December 2003 has been reduced access since then to beef export markets. Principal Asian markets, in particular, remain largely restricted. In 2003, the value of U.S. exports of beef and beef by-products (as measured by the 33 ''beef only'' Census Bureau categories) totaled over $3.9 billion, of which the value of sales to Asian markets totaled $2.4 billion. In 2004, these totals had fallen to $863 million and $16 million, respectively. In 2006, the value of U.S. beef and beef by-product exports worldwide was $2.1 billion, and exports to Asia were valued at $197 million.[15]

Trade impacts tend to decline over time as exporting and importing countries find ways to resume mutually beneficial trade while maintaining the safety of the beef supply. The OIE has developed international science-based

[14] An additional revenue loss of $659,000 per month, October through January, multiplied by the four months, yields an additional annual revenue loss of $2,636,000. This amount divided by the total baseline revenue from cow slaughter projected in the regulatory impact analysis of $2,892,770,580 (5,084,000 cows slaughtered, at a price of $54.19 per cwt and an average weight of 1,050 pounds) yields an additional revenue loss on an annual basis of 0.09 percent.

[15] Compiled by APHIS using data from the Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics.

animal health standards to permit safe international trade in beef from countries that have BSE, based on the risk level of such countries. The OIE has classified both the United State and Canada as controlled risk countries for BSE.

We anticipate that the economic impact of any additional cases of BSE-infected cows imported from Canada will likely be minimal. As noted above, after the 2003 detection of BSE in Washington State, many of the 114 nations which imported U.S. beef banned our beef and live animals, but over half—including our largest export market, Japan—have resumed importing U.S. beef (USDA 2006).[16] The joint U.S.-Japan press statement for resuming trade in beef and beef products after market closures in response to finding BSE in the United States noted that the United States has a ''robust'' food safety system, and stated that ''identification of a few additional BSE cases will not result in market closures and disruption of beef trade patterns without scientific foundations'' (USDA 2004). Adherence to science is imperative to expanding trade opportunities and maintaining existing market access. Continued import bans by other countries without sufficient scientific basis to warrant such measures, and maintained without adequate assessment of specific risks, may not be consistent with international trade obligations, and U.S. Government agencies continue to work to reopen such markets.

One of the potential incremental costs of the detection of BSE in an imported cow is the regulatory expense of investigating such cases and paying indemnity for animals that are destroyed. Based on the U.S. experience with native BSE cases that have been detected, the regulatory costs per case total approximately $250,000 for epidemiological investigations and indemnification of depopulated animals.

The potential domestic market effects of any new cases of BSE are difficult to predict. However, as described in the consequence assessment in our risk assessment, there is little reason to expect that additional U.S. cases of BSE would have a significant impact on U.S. beef consumption, based on past experience.

Although the first U.S. discovery of BSE, a cow of Canadian origin, resulted in major restrictions on U.S. beef exports, that case and subsequent cases have not, to use the commenter's term, ''substantially undercut'' U.S. demand for beef or dairy products. Studies show that any negative consumer response to the discoveries of BSE in Canada and the United States in May and December 2003, respectively, was neither significant nor long-lasting.

Consumer opinion surveys as summarized by Coffey *et al.* (2005) indicated that between 14 and 29 percent of respondents reported reducing their beef consumption. However, as Kuchler and Tegene (2006) point out, survey responses may systematically differ from actual market behavior. Coffey *et al.* found that, in the months following the December 2003 BSE discovery, consumer demand for beef increased.

Vickner, Bailey, and Dustin (2006) analyzed weekly grocery store purchases, from May 9, 2004, to May 1, 2005. The authors studied the impact of BSE announcements on consumer demand for beef in Utah over this time period and found that Utah consumers were not responsive to BSE announcements during that period. Kuchler and Tegene found similar results on a national scale. The authors studied three separate markets, including fresh beef from grocery store meat counters, frozen beef, and frankfurters. The study concluded that the announcement of the finding of BSE in a Washington State cow may have reduced purchases of fresh and frozen beef over a 2-week period, but had no impact on purchases of frankfurters. A similar announcement for the finding of BSE in Canada had no noticeable impact on beef purchases in the United States.

Although various consumer studies have concluded that discovery of additional cases of BSE in the United States may lead to decreased consumption of beef, the market has not substantiated this conclusion. In the first year after the December 2003 BSE discovery, beef consumption increased. While consumption in 2005 was above 1998 levels, consumer demand started to decline. This decline was likely due to a combination of factors, including increased supplies of poultry and a slowing of growth in consumers' disposable incomes (Mintert, 2006). There is no evidence to suggest a decline in consumption related to the confirmation of additional cases of BSE in the United States.

Issue: Several commenters stated that APHIS' economic analysis does not consider potential demand changes regarding exports of U.S. beef that could result from implementation of the proposed rule. A number of commenters expressed concern that the rulemaking would exacerbate the limited access of U.S. beef to world markets and harm the ability of the United States to restore lost export markets. Commenters stated that imports of Canadian cattle and beef are currently banned by 35 countries, including the important U.S. export markets of the Republic of Korea, Singapore, and Taiwan, and that APHIS should not consider relaxing its BSE import restrictions in light of ongoing international concerns regarding the safety of Canadian beef and cattle. Other commenters stated that the United States should allow imports only of classes of cattle and beef that U.S. export markets are willing to accept from the United States.

Several commenters expressed concern that, should Mexico cease accepting imports of cattle and beef from Canada, the commingling of Canadian and U.S. cattle and beef products would negatively affect the reopening of Mexico to U.S. live breeding cattle and the present export of processed beef to Mexico.

Response: The commenters raise the concern that, by allowing Canadian cattle born on or after March 1, 1999, to be imported into the United States, U.S. beef export markets will become more restrictive. Various countries have enacted different levels of restriction on beef imports from the United States and Canada. However, we expect any restrictions placed on beef from the United States and Canada by an importing country to become more uniform, as discussed below, and, therefore, for the rule to have little effect on U.S. beef export markets.

The reason for the expected uniformity is the May 2007 OIE decision to classify both Canada and the United States as BSE controlled risk countries. By this decision, the OIE recognized the effectiveness of the science-based mitigations and interlocking safeguards in both countries. This classification is expected to help the beef industries in both the United States and Canada to expand their access to export markets.

Issue: One commenter stated that APHIS' economic analysis does not truly analyze the potential ''consumer welfare'' of the rulemaking. The commenter stated that the closest the analysis gets to considering the consumer is its consideration of wholesale buyers of processing beef and fed beef—whom the commenter stated APHIS should identify as the primary beneficiary of the rule.

Response: The principal model that we use to estimate welfare effects resulting from the rule does not extend beyond the wholesale level to retailers and end buyers of beef. We

[16] The temporary closure of the U.S. export market to Japan in January 2006 was in response to a specific commodity concern and not to the likelihood of BSE infection in the U.S. herd.

acknowledge this modeling choice in our discussion of sector impacts in the analysis for the final rule, and note that benefits received at the wholesale level can be expected to be at least partly distributed downstream to retailers and final buyers, depending on the levels of competition. Nevertheless APHIS believes this modeling choice is consistent with standard RIA practices, as recommended by OMB Circular A–4, and that it adequately identifies the impact of this regulatory action.

APHIS agrees, however, that some indication of the distribution of benefits in different product markets would be an interesting addition to the model. As part of the economic analysis for the final rule, we simulate substitution among livestock products in response to relative price changes using a multi-sector model. Although meant simply to be illustrative and subject to considerable uncertainty, included in the simulations is a derivation of consumer welfare changes at the retail level. Results of this analysis suggest that consumer surplus for buyers of beef at the retail level may increase by 1.0 to 1.3 percent compared to a 2006 baseline.

Issue: One commenter stated that APHIS should also broaden the model used in the economic analysis to account for cull animal producers, so that welfare implications to producers of U.S. cull animals and processing beef could be separated from those of the packers. The commenter stated that APHIS' analysis includes no single estimate of the economic impact of the rule on cow-calf producers resulting from the change in value and demand for U.S. cattle.

A number of cow-calf producers provided estimates of the potential economic impact of the proposed rule on their individual operations.

Response: In our regulatory flexibility analysis for this final rule, we present a sector-based analysis that includes a separate consideration of impacts of the rule for the cow-calf and dairy sector. The sector analysis uses the measures of welfare change estimated for cull cattle/processing beef, feeder cattle, fed cattle, and fed beef, distributing these changes among the commodities' principal buyers and sellers.

Concerning the numerous comments we received regarding economic impacts of the rule on individual livestock producers, we acknowledge that analysis does not fully identify the distribution of all of the possible effects on the vast array of different types of entities that comprise the cattle and beef industries. Because of the different choices made by market participants, it would be difficult, if not impossible, to design such an analysis. For example, some large firms likely also act as wholesalers and distributors, and may be participants in fed cattle, feeder cattle, and other markets. The analysis APHIS has produced does identify the direct impacts of the regulation on the industry; the results of our analysis are based on baseline quantities and prices and import projections that are well supported by historical trends and economic research. The models that we use to estimate price and welfare effects are also well-grounded in theory and utilize methodologies widely accepted by economists. We are confident that the results of the analysis appropriately depict expected net effects of the rule for the modeled commodities.

Issue: Commenters noted that APHIS estimated that 46,800 Canadian dairy breeding animals could be imported annually into the United States as a result of this rulemaking. The commenters expressed concern that these animals would have a negative impact on the effectiveness of the Cooperatives Working Together (CWT) herd retirement program, which the commenters noted is funded by voluntary dairy producer assessments. (CWT is a national program, organized by dairy farmers, with the goal of reducing milk supply and demand imbalances and, in doing so, of delivering a significant return on farmers' investments through higher, more stable, milk prices.)

The commenters stated that the proposed rule would have the effect of having U.S. dairy farmers assessed to reduce the U.S. dairy cattle herd, while, at the same time, cattle are being imported from Canada to replace those animals.

One commenter stated that APHIS should have made the effort to incorporate ''expected future net returns,'' as well as impacts on milk prices, into an analysis of breeding cattle imports, and that the economic analysis should have modeled impacts on the milk market, and resulting impacts on producer incomes and the price of milk cows. Commenters expressed the opinion that APHIS failed to meet its obligations under Executive Order 12866 and the Regulatory Flexibility Act in its economic analysis by not performing the required analyses regarding imported dairy replacement animals.

Response: We do not expect imports of dairy animals from Canada to add significantly to the U.S. national herd, but, rather, to serve as an additional source of replacement animals. Dairy breeding cattle replacements imported from Canada during 1992 to 2002 represented about 1.1 percent of U.S. dairy heifer replacements over this period. We have no reason to expect the supply of Canadian heifer replacements to be greater than historical levels. In fact, the numbers of dairy heifer replacements present on all cattle operations in Canada have been in decline in recent years, from 512,000 on January 1, 2003, to 476,300 on January 1, 2007. The number of operations that specialize in raising heifers has also decreased. In Ontario and Quebec, there were 487 of these operations on January 1, 2003, and only 296 on January 1, 2005.[17] The currency exchange rate is also less favorable to Canadian exports than it was prior to 2003.

There is no evidence that imports of dairy cattle from Canada have historically had any significant effect on the U.S. cow herd, U.S. dairy heifer prices, or U.S. milk prices. The U.S. milk herd declined from about 9.7 million head in 1992 to about 9.1 million in 2002. The number of U.S. milk cow replacements [18] remained essentially steady, fluctuating between 4 million and 4.1 million head over that same time period.[19] An empirical investigation by Mussell, *et al.* (2006) [20] concluded that imports from Canada prior to 2003 had no statistically significant impact on the U.S. dairy herd. Imports of dairy heifers from Canada were also found to have no statistically significant impact on U.S. heifer prices in the United States, nor on U.S. milk prices.

As noted by commenters, a producer dairy herd retirement initiative called CWT is currently underway.[21] The number of imported dairy breeding cattle projected in our economic analysis for the proposed rule was based on historical import levels prior to formation of CWT. Imports of dairy heifers are driven by the demand for replacement animals, relative prices, and the exchange rate. If dairy farmers are dedicated to reducing the national

[17] Ontario and Quebec account for approximately two-thirds of the dairy cattle inventory in Canada. Source: Statistics Canada, as cited in Al Mussell, Graeme Hedley, Don Ault, and David Bullock, ''Role and Impact of Renewed Canada—U.S. Trade in Dairy Heifers and Dairy Breeding Stock,'' George Morris Centre, Informa Economics, February 2006. *http://www.informaecon.com/*

[18] Heifers 500 pounds and over kept for milk cow replacements. Source: Agricultural Statistics, National Agricultural Statistics Service, USDA.

[19] In table 17 of the preliminary Regulatory Impact Analysis that accompanied our January 2007 proposed rule (Docket No. APHIS 2006–0041), under column ''Average Annual U.S. Heifer Replacements'' the numbers for Beef and Dairy were transposed.

[20] Mussell, *et al.* (February 2006).

[21] *http://www.cwt.coop*

dairy herd, they may purchase fewer replacement animals and the import projections may be overstated. However, if a replacement dairy heifer from Canada can be purchased at a lower price than a domestic one, then it is to the producer's (and industry's) advantage for the Canadian replacement to be purchased and a domestically raised animal to be retired. Therefore, APHIS disagrees with the commenters' claims that dairy producers will somehow be worse off with this rulemaking. As a lower priced replacement heifer would represent a lower priced input into the production of dairy products, standard economic theory indicates that producers and consumers will be better off.

Issue: One commenter stated that APHIS' economic analysis indicates that imports of dairy cattle from Canada would be expected to represent ''only'' 1.1 percent of the annual U.S. dairy heifer crop. The commenter stated that, although APHIS labels this percentage as small, a short-term change in the milking herd of 1 percent can change milk prices by 10 percent or more.

Response: We agree that a 1 percent increase in the national dairy herd (and a corresponding increase in milk production) may result in a decline in milk prices. However, as we discuss above, imports of dairy animals from Canada that occur should serve as an additional source of replacement animals, rather than adding entirely to the national milking herd. First, we would reiterate that imports are voluntary; we believe any projected imports of dairy heifers would be undertaken because the cost saving associated with the import would be greater than any decrease in revenue due to relative price declines resulting from higher production and lower prices. We further note that we believe the comment overestimated the expected price declines due to this regulatory change. The projected number of imported dairy cattle is equivalent to 1 percent of the dairy heifer crop and not 1 percent of the entire milking herd, which is more than twice the size of the annual dairy heifer crop. Projected imports of dairy heifer replacements and other breeding cattle represent approximately 0.45 percent of the milking herd.

In 2006, the farm-milk supply produced from 9.1 million dairy cows was 181.8 billion pounds of milk (19,951 pounds per cow) at an all-milk price of $12.90 per cwt, which is a weighted average of the fluid grade milk price of $12.92 per cwt and the manufacturing grade milk price of $12.21 per cwt. An increase in the size of the milking herd would increase milk production.

If all 47,800 [22] dairy heifers projected to be imported from Canada were to constitute an addition to the U.S. milking herd, they would represent a 0.5 percent increase over the 2006 U.S. herd size. This increase would correspond to a change in milk production of approximately 0.5 percent.[23] We would expect the short-run effects (more inelastic supply) of such an increase in the U.S. milking herd to be larger than the longer term effects (more elastic supply). Assuming a short-run supply elasticity of milk of 0.15 and a demand elasticity of -0.30,[24] a 0.5 percent increase in milk production is estimated to decrease the milk price by 15 cents per cwt. This translates into a 1.2 percent price decline. As supply becomes more elastic, the price decline resulting from a 0.5 percent increase in production becomes smaller. Assuming a longer run supply elasticity of 0.50 would lead to an estimated decline in price of 9 cents per cwt, or 0.7 percent.

This example of potential effects on milk prices due to changes in the size of the U.S. milking herd assumes that the projected imports of Canadian breeding cattle would be absorbed into the U.S. milking herd in their entirety, thereby slightly expanding the overall size of the U.S. milking herd. An analysis of scenario 3 as discussed in our economic analysis and in the summary of that analysis in this document (entry of Canadian cattle born on or after March 1, 1999, and resumption of imports of beef from Canadian cattle slaughtered at 30 months of age or older) using the multi-sector model indicates that dairy producers may experience price declines of 1.3 to 1.7 percent for dairy cattle, due to the small number projected to be imported from Canada. These imports translate into an increase in U.S. milk production of 0.1 percent or less, and a decline in the price of milk and increase in consumer surplus of less than 0.1 percent.

[22] Projected annual imports 2008–2012.

[23] Assuming the additional heifers produce milk at the same average rate reported for the U.S. herd in 2006.

[24] Milk supply elasticities of 0.12 in year 1 and 2.46 in year 10 are cited in Chavas, J.P., and R.M Klemme, ''Aggregate Milk Supply Response and Investment Behavior on U.S. Dairy Farms,'' *American Journal of Agricultural Economics* 78 (February 1986). A total dairy product demand elasticity of -0.31 is cited in Haidacher, R.C., J.R. Blaylock, and L.H. Meyers. ''Consumer Demand for Dairy Products, A Summary Analysis.'' USDA Economic Research Service, Agriculture Information Bulletin 537 (March 1988).

Issue: One commenter noted that the importation of live animals from Canada has enabled many U.S. plants to better utilize their slaughter capacity, allowing them to maximize plant efficiencies. The commenter stated that allowing the resumption of imports of older animals to the United States, as envisaged in the proposed rule, might enable some previously closed plants to reopen.

Response: The resumption of cull cattle imports from Canada will provide increased throughput for U.S. slaughter plants, especially those that principally slaughter and process cull animals. While the cattle from Canada will enable these businesses to more fully utilize their available capacities, we do not anticipate the effects to be highly significant. Nor are we aware of plants that have closed and will be reopened due to reestablished cull cattle imports. Our analysis for scenario 3 as discussed in our economic analysis and in the summary of that analysis in this document (entry of Canadian cattle born on or after March 1, 1999, and resumption of imports of beef from Canadian cattle slaughtered at 30 months of age or older) indicates that the additional numbers of cull cattle marketed over the 5 years, 2008–2012, will not increase substantially. Compared to projected U.S. baseline slaughter numbers averaging 5.4 million head of cows and 570,000 head of bulls and stags over the 5-year period, imports of Canadian cows and bulls/stags are projected to average 89,400 head and 16,600 head over the same period, representing 1.7 percent and 2.9 percent of the baseline quantities. These percentages in fact overstate the expected impact of the rule in terms of cull cattle slaughter because they do not take into account the effect of expected price declines on domestic sales. Notwithstanding this cautious assessment of the extent to which the rule will benefit U.S. facilities, the slaughter industry is expected to benefit from improved operating efficiencies.

Issue: One commenter stated that APHIS' economic analysis for the proposed rule did not consider the economic implications of the combination of the rule and Canada's implementation of its expanded feed ban on July 12, 2007, which bans the inclusion of SRMs in any animal feeds, pet foods, and fertilizers. The commenter stated that, under the expanded Canadian feed ban, SRMs in Canada will have little or no economic value. Instead, said the commenter, the materials will generate a disposal cost, thereby providing increased incentive for Canadian producers to ''send all their cattle over 30 months of age to the

U.S. for slaughter where the SRMs can continue to be used as ingredients in other U.S. animal feed, pet food, and fertilizer * * *. The result would be an even greater supply of imported Canadian cattle than what APHIS presently predicts and a correspondingly greater decline in U.S. cattle prices.''

Response: We acknowledge that Canada's July 2007 expansion of its feed ban eliminates the value of SRMs for producers of cattle slaughtered in Canada, and we agree that the continued use of SRMs in the United States for rendered purposes other than as a component of ruminant feed will contribute to a difference in prices paid for cattle at slaughter in Canada and the United States. Because SRMs are defined more broadly for cattle 30 months of age or older than for animals under 30 months of age, this effect on relative prices in the two countries will be more notable for cull cattle. For all cattle, the tonsils and distal ileum are considered SRMs, whereas for cattle 30 months of age or older, SRMs also include the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia.

However, even for cull cattle, the value of rendered SRMs is relatively minor in comparison to the total value of the slaughtered animal. In a 2005 analysis of economic impacts of alternative FDA animal feed regulations, the value of SRMs was estimated using a 4-year average of byproduct market prices.[25] For cattle slaughtered at greater than 30 months of age, the value of SRMs used in MBM products was valued at $2.35 per animal, and the value of SRMs used for tallow was valued at $2.19 per animal. Thus, the total value of SRMs from cull cattle used as rendered byproducts is estimated to be less than $5 per animal. Given a projected 2008 nominal value of about $569 per cow, the income from SRMs gained by selling the animal in the United States rather than in Canada will represent less than 1 percent of the projected price of the animal at slaughter.[26] Canada's July 2007 feed ban may make the U.S. market more attractive, but not appreciably.

Issue: One commenter stated that APHIS' analysis of the projected economic effects of the rule should be revised to take into account the handling of increased amounts of SRMs.

Response: In the regulatory impact analysis we conducted for this rule, projected prices for processing beef and fed beef incorporate animal slaughter and meat packing costs, including costs of handling SRMs. Costs and returns per animal of handling SRMs are not expected to change for slaughtering facilities because of the rule and therefore do not require specific analysis. Copies of the full amended analysis may be viewed on the APHIS Web site (*http://www.aphis.usda.gov/newsroom/hot_issues/bse/index.shtml*), or be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Environmental Assessment for the Rulemaking

Consistent with the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), regulations of the Council on Environmental Quality (CEQ) for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), and APHIS' NEPA implementing procedures (7 CFR part 372), we prepared an environmental assessment (EA) regarding the potential impact on the quality of the human environment due to the importation of live bovines and products derived from bovines under the conditions specified in our proposed rule. We made the EA available to the public and accepted public comment on its provisions. We discuss below the issues raised by commenters who addressed the EA.

Issue: One commenter stated that the EA that APHIS conducted for the proposed rule did not adequately discuss the impact of air emissions from additional truck round-trips entering the United States that would result from importation of cattle 30 months of age and older from Canada. The commenter stated that USDA apparently did not consider the fact that these emissions would be concentrated in relatively small parts of the country. Further, said the commenter, the EA's discussion of air pollutants and mitigation measures is limited to those pollutants regulated under the Clean Air Act and does not recognize what the commenter described as substantial emissions of greenhouse gases that could result from the additional truck trips.

Response: Our EA estimated that the number of additional cattle that would be available for importation into the United States as a result of this rule would result in a 0.05–0.16 percent increase in truck transports, compared to the annual truck transport baseline, discussed below. However, more recent data from ERS indicate that the number of additional cattle that would be available and eligible for import from Canada as a result of this rulemaking initially will be less than the number we used in the calculations for our October 2006 EA. Consequently, the estimated number of truck transports initially will also be less, as will the emissions generated by such transports.

In the finding of no significant impact (FONSI) (APHIS 2005a) that APHIS made in conjunction with our January 2005 final rule, we discussed truck transports for cattle under 30 months of age. Prior to implementation of that final rule, the projected number of imports of cattle under 30 months of age would have caused the resumption of about 35,000 truck transports. The FONSI for our January 2005 final rule determined that the result of environmental impacts from resuming 35,000 trucks transports would be *de minimus.* Afterward, based on a decrease in the projected number of available imported animals under 30 months of age, the estimated number of truck transports projected to be resumed was adjusted downward to range between 19,460 to 22,140 annually.

As discussed in the EA for this final rule, for cattle born on or after March 1, 1999, cattle import numbers are projected to range between 130,000 to 446,000 over a 20-year period after implementation of this rule. The number of associated truck transports that would resume for this rule would range from 2,600 to 8,920. When added to the truck transports resumed as a result of our January 2005 final rule, the total number of projected resumed truck transports is still within the amount described in the FONSI for our January 2005 final rule as *de minimus.* Additionally, that projected number is within the number of truck transports for cattle trade that occurred between Canada and the United States before such trade was temporarily halted in May 2003.

As we stated in our EA, the transport of cattle could occur through any of 20 U.S.-Canadian border ports specifically equipped to handle cattle. These ports are not confined to one region of the United States, but stretch across nine northern border States from Washington to Vermont. Market patterns and geographic issues can cause fluctuations in the availability and importation of cattle. Availability of cattle for

[25] ''Economic Impacts of Alternative Changes to the FDA Regulation of Animal Feeds to Address the Risk of Bovine Spongiform Encephalopathy: Final Report.'' Submitted by Eastern Research Group, Inc. to the Office of Policy and Planning, Food and Drug Administration, July 25, 2005.

[26] Boning utility cow, Sioux Falls, price of $54.19 per cwt, multiplied by an average weight of 1,050 pounds yields an average value of $569 per animal. Assuming a total value per cow for rendered SRMs of five dollars: $5/$569 = 0.0088.

importation also can vary depending upon the time of year and geographic location. For example, most feeder cattle are imported through certain western ports from areas with the highest cattle population in Canada, and more feeder cattle may become available in the fall when ranchers wean calves and sell them. Cull cattle for immediate slaughter historically have come through different ports than feeder cattle, including some eastern ports. Emissions from trucks importing cattle from Canada could affect any of the 20 locations at the U.S.-Canadian border and any location between transport origination and destination.

In determining if the impacts from truck transport emissions from carrying additional cattle as a result of this rule could result in a significant impact on the environment, a baseline of the annual overall truck transports was used. In this case, the baseline used for comparison was for all incoming trucks from Canada to the United States through 20 approved ports of entry where cattle can transit to determine whether the increase in the numbers of imported cattle would cause a significant increase in air emissions. The comparison of the baseline (the average number of heavy-duty truck crossings annually between the U.S.-Canadian border) to the number of truck transports estimated for cattle 30 months of age and older that would be available to be imported from Canada annually shows that the increase in the number of truck transports would not be significant.

To a great extent, projecting the specific air emissions that would result from implementation of this rule would be speculative. Emissions vary according to many different factors, including type of truck engine, the year the engine was manufactured, fuel properties, the type of hauler and weight of the load, the grade of the highways on the transport routes, the distance traveled, speed and acceleration, and the amount of wait time at the border ports. Due to the comparatively small amount of truck transports (ranging from 2,600 to 8,920) that are projected to result from this rule in relation to the baseline, speculating on the specific air emissions that would result from this rule would not result in information indicating that the indirect impacts, unassociated with the scope of this rule, would contribute to significant adverse impacts on the environment from resuming imports from Canada of cattle over 30 months of age born on or after March 1, 1999.

The method of transporting cattle and the type of vehicle to be used are not mandated by APHIS regulations. Emissions from the transport of cattle, or of any commodity moved by modern transport methods, are unavoidable. However, measures to reduce the impacts from vehicle emissions are enforced by environmental statutes, such as the Clean Air Act, at both the State and Federal levels and have been reported to be effective in regulating and decreasing vehicle emissions. Mitigations for vehicle emissions are under the jurisdiction of the U.S. Environmental Protection Agency and State government agencies and are outside of the mission of APHIS.

The commenter is correct that the EA did not discuss the contribution of greenhouse gases from the transport trucks that would be used to import cattle and did not discuss mitigation measures for greenhouse gases. We note that draft guidance provided to Federal agencies from the Council on Environmental Quality with regard to consideration of global climatic change in environmental documents calls for consideration, in the context of NEPA, of how major Federal actions could influence the emissions and sinks of greenhouse gases and how climate change could potentially influence such actions.[27] We interpret that this guidance does not apply to this rulemaking because it is not a major Federal action that could influence the emissions and sinks of greenhouse gases.[28]

Issue: One commenter stated that APHIS' EA did not assess the environmental impact of holding and feeding in the United States each year hundreds of thousands of Canadian cattle 30 months of age or older.

Response: Approximately 34 million head of cattle are slaughtered in the United States each year. Approximately 0.13 to 0.45 million additional head of cattle would be available annually and eligible for importation from Canada under this rulemaking. The majority of cattle that we anticipate being imported from Canada and held in feedlots will be cattle under 30 months of age that are already allowed importation from Canada under our January 2005 final rule. The majority of additional cattle that we expect to be imported as a result of this rulemaking would consist of cows, bulls, and stags imported directly for slaughter that would remain in a holding facility of the slaughter facilities for approximately 1 to 2 days before slaughter. A small percentage of the remainder of the cattle that we expect to be imported as a result of this rulemaking would consist of breeding cattle (for example, dairy or beef cows and heifers and bulls) that would be integrated into a cattle herd for an indefinite period of time. Thus, for purposes of the EA, the cattle that would be imported would not be held in feedlots for a long duration and would not contribute to an increase to the baseline of the number of cattle produced in the United States and held and fed in feedlots each year.

Pollutant discharges and emissions from holding cattle in feedlots are unavoidable; however, measures to reduce the impacts from feedlot discharges and emissions are enforced by environmental statutes, such as the Clean Water Act and the Clean Air Act, at both the State and Federal levels. Requirements for mitigating pollutant discharges and emissions, under the jurisdiction of Federal and State government agencies, are intended to protect the human environment of the United States.

Issue: One commenter expressed the opinion that our EA was inadequate because, according to the commenter, it failed to explain why the potential for widespread distribution of infectious BSE prion proteins is not a significant environmental impact. The commenter expressed concern that blood and SRMs that will be collected when cattle of Canadian origin that are over 30 months of age are slaughtered can be used as fertilizer and be spread on the ground (and ingested as well as running off into streams) on farms throughout the United States. The commenter stated further that the EA did not assess the environmental impact of distributing infectious BSE prion proteins in animal feed that will be used (and spilled, disposed of, and excreted) on farms across the United States. The commenter stated that OIE guidelines prohibit trade in SRMs for use in fertilizer, as well as trade in fertilizer contaminated with SRMs.

Response: The commenter did not specify, and it is not clear to us, in what manner the commenter anticipates prions being widely distributed through animal feed and fertilizer and having a significant impact on the quality of the human environment. Scientists believe that the primary route of BSE

[27] Memorandum to All Federal NEPA Liaisons, dated October 8, 1997, from Dinah Bear, General Counsel, Executive Office of the President, Council on Environmental Quality, with attached draft memorandum from Kathleen A. McGinty, Chairman, on Guidance Regarding Consideration of Global Climatic Change in Environmental Documents Prepared Pursuant to the National Environmental Policy Act.

[28] A sink is, simply speaking, the converse of a source. Instead of releasing carbon into the atmosphere as is done when fossil fuels or wood are burned, sinks absorb carbon and lock it in. The most obvious examples are trees and other plants.

transmission in cattle requires that an animal ingest feed that has been contaminated with a sufficient amount of tissue from an infected animal. In humans, vCJD, a chronic and fatal neurodegenerative disease of humans, has been linked via scientific and epidemiological studies to exposure to the BSE agent, most likely through consumption of cattle products contaminated with the BSE agent. Therefore, our assumption is that the commenter's primary concern regarding the potential impact of feed and fertilizer on the environment is the potential consumption of BSE-contaminated feed or fertilizer by ruminants or humans. We also consider it possible that the commenter is concerned about the potential for the BSE agent to be consumed by animals other than ruminants, excreted by those animals, and subsequently consumed by ruminants or humans.

The commenter stated that APHIS inadequately assessed the potential environmental impact of contaminated feed and fertilizer. We disagree with the commenter. Our EA evaluated the potential impact of the proposed rule on the physical environment, public health, and endangered species, as well as cumulative impacts of any of the above. The EA referenced and discussed the conclusions of the risk assessment we conducted for this rulemaking, in which we assessed the likelihood that U.S. cattle would be exposed to the BSE agent as a result of this rule. Our risk assessment examined the likelihood of exposure of ruminants to BSE via feed.

Our evaluation of risk included an understanding that SRMs from live cattle imported under the conditions of the proposed rule would enter the U.S. rendering system, in the same fashion that SRMs from cattle of U.S. origin are generally disposed of. The protein products from the rendering system could then be incorporated into either animal feed or fertilizer. We assumed in the risk assessment that the vast majority of rendered protein products are sold for use in animal feed. The commenter makes this assumption as well, stating that ''* * * SRMs can be used as a protein source for animal feed other than ruminant feed, and it is reasonable to assume that they will be, given the favorable economics of this use as compared to SRM disposal.''

The quantitative exposure model used in the risk assessment specifically simulated potential exposures through feed—either through ruminant feed that was mislabeled or cross-contaminated, through other animal feed that was misfed to ruminants, or directly through poultry litter that could contain spilled feed and be fed back to cattle. These pathways are the most direct exposure of cattle that could occur.

We disagree with the commenter's assertion that APHIS did not consider ''spilled, disposed of, or excreted'' animal feed as a potential pathway of BSE transmission. The poultry litter pathway modeled in the quantitative exposure model specifically addresses spilled and even undigested excreted feed, with very conservative assumptions about potential infectivity retained in such feed. The issue of feed being ''disposed of'' is addressed through the misfeeding component of the model, which incorporates situations where non-ruminant feed is fed directly to cattle. These situations would include those where a producer either mistakenly or intentionally feeds non-ruminant feed to ruminants. Mislabeling and misfeeding components would include situations where non-ruminant feed is sold for salvage value. We are not aware of similar situations where litter or waste from other species—for example, swine litter—that contains quantities of either spilled or undigested feed is routinely used for cattle feed. Further, there is no evidence to date of environmental contamination (e.g., via fecal or other bodily excretions) being a route of transmission of BSE. Therefore, we do not consider there to be potentially significant pathways for exposure of susceptible animals to BSE-contaminated feed that were not considered in the risk assessment.

With regard to potential exposure of humans to the BSE agent, there is no evidence, anecdotal or otherwise, to suggest any likelihood of BSE-contaminated animal feed, spilled or excreted, being consumed by humans, and we consider the risk of such exposure to be negligible.

The commenter also stated that the EA should have examined the potential impact on the environment of BSE-contaminated fertilizer. As noted above, although rendered protein can be a component of fertilizer, such usage is not common because most rendered proteins are sold for use in feed. Any consideration of animal health exposure from fertilizer would be an evaluation of the risk of cattle exposure to BSE through oral consumption of fertilizer that contains rendered protein. Our quantitative exposure model evaluates the potential oral exposure of cattle to feed containing such rendered protein. It does not specifically model potential exposure through fertilizer. However, it assumes that all rendered ruminant protein products are sold for feed use. Therefore, any of the infectivity contained in rendered ruminant protein is already simulated through the potential for direct feed exposure. This is a more direct pathway than any potential consumption of a component of a fertilizer product, some undefined time after it was spread on a pasture. Therefore, any potential exposure through fertilizer would be assumed to be far less than the exposure the model already takes into account through the consumption of feed.

It appears that the commenter is suggesting that raw, untreated SRMs might be spread directly on land as fertilizer. Raw or untreated tissues are not generally used as fertilizer, and, in fact, are often prohibited from being spread on land through environmental regulations on carcass/offal disposal and solid waste disposal. Therefore, this risk pathway was not considered in our risk assessment.

With regard to the likelihood of exposure of humans to the BSE agent through fertilizer, we are assuming the commenter is not referring to potential consumption by humans of fertilizer, and is referring instead to some other method of BSE transmission to humans through fertilizer. As noted above, there is no evidence to date of environmental contamination being a route of transmission of BSE.

Regarding the commenter's statement that OIE guidelines recommend that trade not be carried out in SRMs for use in fertilizer, as well as trade in fertilizer contaminated with SRMs, the primary purpose of such guidelines is to reduce the possibility of the consumption by cattle of such product due to mislabeling or misdirection of shipments—e.g., through having SRM-derived protein for fertilizer mistakenly sent to a feed mill.

Other Issues

A number of commenters raised other issues that did not address the provisions of the proposed rule.

Requests Regarding the Importation of Additional Commodities

We received comments that requested that bovine commodities not specifically addressed in our proposed rule be made eligible for importation into the United States.

Issue: Several commenters requested that U.S. regulations with regard to BSE allow the importation of the same commodities that Canada considers eligible for importation from the United States.

Response: Although in most cases, Canadian and U.S. import restrictions regarding BSE are comparable, we do not consider it practical or advisable to attempt to mirror the regulations of another country, given differences in regulatory approach, structure, and authority.

Issue: Commenters requested that the current regulations be amended to allow the importation from BSE minimal-risk regions of rendered feed products—including bovine-derived meat-and-bone meal and blood meal—that are manufactured in compliance with U.S. regulations if the products can be determined to meet the health protection objectives of the recommended standards of the OIE.

Response: The recommended standards of the OIE clearly state that ruminant-derived rendered protein should not be traded from either controlled risk or undetermined risk countries.

For the reasons discussed above, we are making no changes based on these comments.

APHIS's Use of the Term ''Minimal-Risk Region''

Issue: Several commenters requested that APHIS discontinue classifying and referring to countries as ''BSE minimal-risk regions.'' The commenters stated that APHIS's definition of ''minimal-risk regions'' does not follow the scientific terminology of the OIE, which classifies countries with regard to BSE risk as ''negligible,'' ''controlled,'' or ''undetermined.'' One commenter stated that APHIS's classification of BSE minimal-risk regions may create confusion and be seen as not accepting the OIE categorization criteria.

Response: At the time APHIS published its January 2005 final rule to recognize a category of BSE minimal-risk regions, the OIE guidelines regarding BSE provided for five possible BSE classifications for regions. For each classification, the guidelines recommended different export conditions for live animals and products, based on the risk presented by the region. Although APHIS did not incorporate the text of OIE's BSE guidelines into its January 2005 rule, the agency based its standards regarding BSE minimal-risk regions on these guidelines. Although we are making no changes based on the comments, it is APHIS's intent to develop rulemaking that would more closely employ terminology used in the current OIE standards.

BSE Surveillance in the United States

Issue: Several commenters expressed general concern with the effectiveness of the current BSE testing program in the United States. One commenter stated that a report issued by the U.S. Office of the Inspector General (OIG) called into question USDA's ability to adequately detect BSE, even before the most recent reduction in the U.S. surveillance program. The commenter stated that an OIG report pointed to the voluntary nature of the surveillance program and the program's sampling protocols as indicators that the surveillance program may not have been providing an accurate picture of BSE prevalence in the United States. The report also noted that the surveillance program, which focused on high-risk cows, did not account for emerging evidence that BSE has been detected in seemingly healthy animals.

Response: We assume the commenters are referring to an OIG audit report issued in August 2004. This audit was conducted prior to the implementation of the enhanced surveillance program and, therefore, was limited in the conclusions that could be made about the performance of that effort. The report stated the following: ''Our review was limited because implementation plans have not been finalized and APHIS has not yet been able to address some of the questions we have raised.'' Nevertheless, APHIS responded to the recommendations provided by OIG and addressed the issues raised. A second audit report was issued in January 2006, covering both the surveillance program and FSIS' controls on SRM requirements and advanced meat recovery products. This report included a recommendation, among others, for transparency in the analysis and conclusions derived from the data obtained during the surveillance efforts. APHIS has subsequently completed and released a detailed summary of the data obtained during the enhanced surveillance effort, and an estimate of the prevalence of BSE in the United States adult cattle population. This analysis concluded that the prevalence of the disease in this country is extremely low, less than 1 case per million adult cattle. Two models were used to estimate the prevalence, and the most likely values calculated by these models for the estimated number of cases were 4 or 7 infected animals out of 42 million adult cattle. APHIS' analysis was submitted to the scrutiny of a peer review process, and the expert panel agreed with the appropriateness of APHIS' assumptions and the factors it considered, as well as with the estimate of BSE prevalence.

Country-of-Origin Labeling

A number of commenters recommended that APHIS postpone implementation of this rule until mandatory country-of-origin labeling, as prescribed by the 2002 Farm Bill, is in place in this country.

Response: On May 13, 2002, President Bush signed into law the Farm Security and Rural Investment Act of 2002, more commonly known as the 2002 Farm Bill. One of its many initiatives requires country of origin labeling (COOL) for beef, lamb, pork, fish, perishable agricultural commodities and peanuts. On January 27, 2004, President Bush signed Public Law 108–199 which delays the implementation of mandatory COOL for all covered commodities except wild and farm-raised fish and shellfish until September 30, 2006. On November 10, 2005, President Bush signed Public Law 109–97, which delays the implementation for all covered commodities except wild and farm-raised and shellfish until September 30, 2008. As described in the legislation, program implementation is the responsibility of USDA's Agricultural Marketing Service.

The COOL program, when fully implemented, will address the concerns raised by commenters with regard to APHIS' proposed rule. APHIS does not consider it necessary to delay implementation of this rule until those labeling provisions are implemented. In its October 30, 2004 proposal, AMS noted, in discussing Section 10816 of Public Law 107–171 (7 U.S.C. 1638–1638d) regarding COOL that the ''intent of the law is to provide consumers with additional information on which to base their purchasing decisions. It is not a food safety or animal health measure. COOL is a retail labeling program and as such does not address food safety or animal health concerns.''

Comments on Other Issues Outside the Scope of This Rulemaking

A number of other comments also addressed topics outside the scope of the proposed rule. These comments included the following issues: Concern that the examination and euthanization of cattle be carried out in a humane fashion; a request to extend the U.S. ban on the slaughter of nonambulatory cattle to include all livestock species; recommendations regarding the type of penalties USDA should impose for noncompliance with the regulations; comparison of U.S. and Canadian regulations regarding the rendering of cattle slaughtered on-farm; the importation of composted bovine manure from BSE minimal-risk regions; a request to allow the importation of breeding stock and embryos of small ruminants, such as sheep; a request that the USDA allow the importation from BSE minimal-risk regions of up to 5 kilograms of bovine meat and meat products for personal use without certification; and concerns regarding diseases other than BSE.

For the reasons discussed above, we are making no changes to the proposed rule based on these comments.

Final Report From Peer Review of APHIS' Risk Assessment and Responses to Peer Reviewer Questions and Recommendations

As discussed above under the heading ''Peer Review of APHIS' Risk Assessment,'' we requested an external, formal, and independent peer review of our risk assessment by recognized experts in the field. The objective of the peer review was to determine whether the risk assessment was scientifically sound, transparent, and consistent with international standards (e.g., those developed by OIE); the application of external assessments or models was appropriate; and the assumptions were justified, supported and reasonable. In summary, the reviewers found that the methods used in the risk assessment were scientifically rigorous in terms of using existing literature and models appropriately and making sound assumptions and that the risk assessment itself adhered to international risk assessment standards. The reviewers also agreed with the conclusion that the likelihood of establishment of BSE in the U.S. cattle population is negligible. They also asked a variety of questions and suggested minor refinements. APHIS' full response to the comments and recommendation of the peer reviewers may be viewed on the APHIS Web site (*http://www.aphis.usda.gov/newsroom/hot_issues/bse/index.shtml*).

Some of the questions raised by peer reviewers were also posed in public comments on our proposed rule and are addressed above in our responses to public comments. In addition, we set forth here certain other questions and recommendations from peer reviewers that we consider representative of the content-related questions and recommendations of the report, and our response to those questions and recommendations.

Issue: A reviewer suggested that we more explicitly list the specific risks to be addressed in the assessment.

Response: The risk of BSE evaluated in the assessment is the expected impact of importing from Canada live animals, blood and blood products, and small intestines excluding distal ileum. These impacts include the potential for establishment of BSE in the United States and the projected consequences of any additional cases that might occur even without establishment. The risk was evaluated qualitatively for all commodities and also quantitatively for additional live animal import scenarios. For the latter, the likelihood of establishment is measured by the disease reproductive rate (R_0). We also simulated the total number of animals in the United States that might become infected with BSE as a result of the importation of live bovines from Canada over the 20 years. Of the infected animals, those that we assumed might have economic impacts were only the animals expected to live long enough to display clinical signs, as these are the most likely to be detectable with current testing methods. We have added this clarification to the Introduction of the revised risk assessment.

Issue: A reviewer suggested that the analysis needs to acknowledge the exogenous sources of BSE into Canada. As phrased by the reviewer:

> For the assumption that BSE prevalence in Canada would decrease over the next 20 years until the disease is eradicated, the authors relied on compelling evidence from the U.K. experience with the ruminant feed ban and the resulting dramatic decrease in BSE prevalence in cattle. However, this did not address any issues associated with exogenous sources of BSE into Canada (imports from other BSE-affected countries). The Canadian prevalence model used for this analysis appears to assume no new exogenous sources of BSE. The dilution of risk due to current practices that reduce the likelihood of spread of prions through the Canadian cattle herd make this risk minimal at best, but it should be addressed for the sake of completeness.

Response: The prevalence estimation models use BSE surveillance data (test results from dead or slaughtered cattle) as inputs and therefore cannot differentiate whether the source of infectivity is endogenous (recycled) or exogenous (introduced). Also, because they are based on actual surveillance data, they cannot attempt to predict any changes in Canadian BSE prevalence over the next 20 years. The qualitative prediction of a drop in prevalence is based on the experience in the United Kingdom and does not assume that no additional infectivity can be introduced. In addition, the results of the U.S. Harvard model presented in our risk assessment illustrate that, despite the recurrent release of ''exogenous infectivity'' (in this case, from Canada), the reproductive constant, R_0, remains well below one, indicating that the mitigations in place (particularly the ruminant feed ban) are effective in driving disease prevalence downward. Since the feed ban in Canada is very similar to that in the United States, we expect that any additional infectivity that may potentially enter Canada would fail to alter our predictions of a decrease in prevalence over time. For these reasons, we do not explicitly address the source of BSE infectivity in Canada as either endogenous or exogenous.

Issue: A reviewer suggested that we address the amount of uncertainty that is associated with the conclusion that the likelihood of releasing BSE into the United States from Canada via importation of live bovines is extremely low. He suggested that we report and use the 95th confidence levels throughout the assessment.

Response: Uncertainty between prevalence estimation models (BBC or BSurvE) is greater than the statistical uncertainty within prevalence estimation models (represented by confidence levels for a given model). Therefore, uncertainty about prevalence is addressed by considering the two expected (average) prevalence estimates obtained with different models. The reviewer also commented that the expectation that prevalence remains stable at the lower level estimated by the BBC model over the next 20 years is ''a very pessimistic assumption.'' Similarly, another reviewer stated that it is ''very reasonable'' to assume that BSE prevalence in Canada will decrease over the next 20 years until the disease is eradicated . If these assertions are correct, then assuming that prevalence remains stable at the 95 percent (or 99 percent) confidence level estimated by the BSurvE model over the next 20 years would simply result in a more extremely pessimistic assumption. A reviewer commented: ''It should'be pointed out that the other pessimistic assumptions in the Exposure Assessment model (for example no decrease in BSE prevalence over the next 20 years) would likely override any underestimate of the present BSE prevalence due to using the mean BBC prevalence estimate.'' For the reasons noted above, we have elected not to rerun the exposure model using the 95 (or 99) percent confidence level.

Issue: A reviewer commented that ''[o]ne argument that might be made is that introduction will not lead to an establishment of a cycle of infection but may extend the temporal occurrence of the number of cases of BSE in the U.S. Are there any adverse economic effect[s] associated with this outcome? One possibility is that testing levels might need to be maintained for a longer time than if there were no more introduced and detected BSE cases. Market access and prices for beef and beef products might also be adversely affected.''

Response: The APHIS risk assessment did not consider endogenous levels of

BSE in the U.S. cattle herd; however, continuous exogenous inputs of BSE infectivity from Canada (as is assumed in the less likely quantitative scenarios of the risk assessment) or any other source would extend the time to eradication of the disease in the United States. Although the incremental duration of the extended time to eradication is unknown, we expect that it would have little or no practical effect on the potential economic impacts of BSE in the United States. We note that the exposure model, which incorporates several risk-inflating assumptions, estimates that, over the 20 years of the analysis, there will be less than one clinical case of BSE in the United States as a result of the cattle imported from Canada. Given that the United States has already detected three BSE cases (two in native cattle), we do not expect any incremental impact (from a lengthened period of testing or from additional market impacts) of this very small number of potential additional cases. This point is described in detail in the consequence section of our risk assessment.

Issue: One reviewer requested greater attention to uncertainty throughout the document. The reviewer stated, in reference to our risk assessment, that ‘‘uncertainty is consistently underplayed if not ignored’’ and ‘‘it would perhaps be useful to actually list the sources of uncertainty in each of the sections. Another commenter suggested that we list all the model inputs considered to be variable.

Response: We disagree with the reviewers. Though not always addressed as distinct lists, uncertainty and varibiality are incorporated throughout the risk assessment. The models used in the risk assessment are complex with a large number of inputs, which, as for most models, may be somewhat uncertain and/or variable. However, preparing a comprehensive list of uncertain and/or variable risk assessment model inputs is not necessary. In our judgment, the inputs are better discussed in the context of how they are used in the model.

All of the BSE prevalence estimation model inputs represent best available estimates of either a variability distribution (e.g., BSE incubation period, cattle age structure) or a parameter value (e.g., number of adult animals in the herd, age of a BSE tested animal). Consequently, the calculated confidence intervals represent statistical uncertainty about current BSE prevalence related to random sampling error. The major source of uncertainty regarding BSE prevalence in the current standing cattle population was considered to be the effect of the Canadian feed ban. This uncertainty was addressed by considering two BSE prevalence estimation models: The BBC model, which incorporates an estimate of the effect of the feed ban based on evidence from the United Kingdom, and the BSurvE Prevalence B model, which makes no assumptions about the effect of the feed ban. Variability also entered into the prevalence calculation in that the BBC prevalence model assumes that birth year cohort prevalence declined during the first five years after Canada introduced a feed ban in 1997. Thereafter, both the BBC and BSurvE models were used to obtain the expected proportion of BSE infected animals, which is assumed to remain constant over time in the quantitative risk analysis.

Another component of the release assessment, for which uncertainty has not been addressed, is the projection of imports. These projections were prepared by USDA ERS and were based on USDA baseline projections and a broad array of expert opinion. Because they are projections, they are uncertain. This uncertainty has been reduced somewhat by incorporating more recent data into the 2007 import projections, prepared for the final rule. Based on these updates, we expect lower numbers of older animals to be imported in the early years of the rule's implementation. The total imports over the entire 20 years of the analysis are only slightly (125,000 animals) higher than the original and so do not confer significant additional magnitude of release ($125{,}000*0.68*10^{-6}=0.085$ cases; $125{,}000*3.9*10^{-6}=0.49$ cases). Therefore, although the import projections are somewhat uncertain, reduction of this uncertainty has not significantly changed our release estimates or conclusions.

The projections used in the original analysis incorporated temporal variability across years due to the cattle cycle. The variability considered did not include possible but less likely extremes (shocks), such as a temporary spike in slaughter rates due to severe weather.

The parameters for the exposure model have been described in earlier documents (Cohen, *et al.*, 2003). These documents explicitly examined the effects of uncertainty in key parameters in their respective sensitivity analyses. The version of the Harvard model performed for this rule included a sensitivity analysis to examine the uncertainty of several parameters—some of which were included in earlier models, and some of which were new parameters (e.g., the amount of chicken litter incorporated into ruminant feed) and the Canadian BSE prevalence estimate) (APHIS 2007a). Of the uncertain parameters examined, Canadian BSE prevalence over the next 20 years was the most significant source of uncertainty for the model. This uncertainty contains two components: The estimate of prevalence in Canada's current standing cattle population, and how prevalence of BSE in Canada will change over time. This latter component was not treated quantitatively, and its uncertainty was therefore not explicitly analyzed in the sensitivity analysis. Variability in this parameter was addressed, however. Assuming constant prevalence over the next 20 years, the simulated number of BSE infected cattle imported each year still varies, because it is a combination of the predicted import volume (which varies as described above), and the sampling variation (using a Poisson distribution) about the expected prevalence value. This source of variation has already been described in the risk assessment.

In conclusion, rather than perform a comprehensive uncertainty analysis in which all model inputs are treated as statistical distributions, we identified and evaluated the potential contributions to variability and uncertainty that we deemed most relevant to our analysis. Given that the uncertainty about the key inputs to the risk assessment models has been considered, we agree with the reviewers that further uncertainty analysis will not affect the conclusions of the risk assessment.

Adoption of this Final Rule

Therefore, for the reasons given in the proposed rule and in this final rule, we are adopting the proposed rule as a final rule, without change.

Applicability of the March 1, 1999, Date to Imports of Beef

Issue: Several commenters stated that it was not clear from the proposed rule whether the March 1, 1999, date of birth requirement for live bovines imported into the United States from Canada would apply as well to frozen beef products derived from cattle slaughtered in Canada and shipped to the United States. If the same effective date does not apply, stated the commenter, USDA should specify what date would be used for imported frozen beef products. One commenter stated that, in addition to prohibiting the importation of beef from cows born before March 1, 1999, the regulations should limit the importation of beef from BSE minimal-risk regions to that derived from cows slaughtered no earlier than March 1, 1999.

Response: We do not consider it necessary to address the importation of beef from BSE minimal-risk regions in this rulemaking, because the importation conditions for meat, meat byproducts, and meat food products derived from bovines were addressed in the rulemaking for our January 2005 final rule (in which we added the category of BSE minimal-risk regions to the regulations and specified which commodities may be imported from such regions). The risk analysis we conducted for that rulemaking indicated a low BSE risk from such commodities derived from bovines of any age if certain conditions are met. In that rulemaking, we discussed regulatory requirements implemented by FSIS in 2004 that banned SRMs from the human food supply in the United States, and we stated that the Canadian Government had established similar safeguards in Canada.

Consequently, we provided in § 94.19 of the regulations that meat, meat byproducts, and meat food products derived from bovines are eligible for importation from BSE minimal-risk regions if the following conditions, as well as all other applicable requirements of the regulations, are met:

- The commodity is derived from bovines that have been subject to a ruminant feed ban equivalent to the requirements established by the U.S. Food and Drug Administration at 21 CFR 589.2000;
- The commodity is derived from bovines for which an air-injected stunning process was not used at slaughter; and
- The SRMs and small intestine of the bovines from which the commodity was derived were removed at slaughter.

Because there is negligible risk from bovine meat, meat byproducts, and meat food products that meet the above requirements, there is no science-based reason to require that such commodities be derived from bovines born on or after March 1, 1999. As long as the commodities meet the conditions listed above (with the exception of the condition regarding small intestine as discussed in this rule), the regulations will allow for their importation into the United States. We note that the OIE guidelines for trade in fresh meat and meat products from cattle from controlled risk regions (both Canada and the United States are classified as BSE controlled risk regions under the OIE guidelines) recognize the negligible risk presented by such products as long as SRMs are removed, and, therefore, the guidelines do not recommend that the date of birth of the animal from which the commodity was derived be a condition for such trade.

Comments Regarding the Partial Delay in Applicability of the January 2005 Final Rule

Issue: As discussed above in this document, in March 2005, APHIS published a final rule in the **Federal Register** that, pursuant to an announcement by the Secretary of Agriculture in February 2005, delayed the applicability of the provisions in our January 2005 final rule as they apply to the importation from Canada of meat, meat food products, and meat byproducts (other than liver) when derived from bovines 30 months of age or older when slaughtered, as well as certain other bovine products when derived from bovines 30 months of age or older.

A number of commenters either questioned whether the delay in applicability would be lifted if our January 2007 proposed rule were made final, or requested that the delay be lifted.

Response: As discussed above, it is the Secretary's intent to remove the delay in applicability when this rule becomes effective.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be economically significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and a final regulatory flexibility analysis that examines the potential economic effects on small entities as required by section 604 of the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis may be viewed on the APHIS Web site (*http://www.aphis.usda.gov/newsroom/hot_issues/bse/index.shtml*), or be obtained by contacting the persons listed under **FOR FURTHER INFORMATION CONTACT.**

This rule will allow the importation, under certain conditions, of the following commodities from BSE minimal-risk regions (currently only Canada):

- Live bovines that were born on or after March 1, 1999;
- Bovine small intestines, minus the distal ileum;
- Bovine casings; and
- Bovine blood and blood products.

APHIS has determined that the previous restrictions are not warranted by scientific research and evidence, and that they are unnecessary for maintaining a negligible risk (i.e., the likelihood of establishment and the potential impacts of cases that may occur even without establishment) to the United States via imports of live bovines and bovine products from such regions.

Additionally, this rule removes the delay of applicability of provisions of our January 2005 final rule regarding the importation of meat, meat products, and meat byproducts derived from bovines in Canada that were 30 months of age or older when slaughtered.

This regulatory impact analysis (RIA) addresses expected economic effects of allowing resumption of imports from Canada of the above commodities. Expected benefits and costs are examined in accordance with Executive Order 12866. Expected economic impacts for small entities are also evaluated, as required by the Regulatory Flexibility Act. Our analysis indicates that benefits of the rule will exceed costs overall. Effects for Canadian and other foreign entities are not addressed in this analysis. However, the Agency expects reestablished access to U.S. markets to benefit Canadian producers and suppliers of commodities included in the rule.

Analytical Approach

The approach and models used in this analysis are the same as were applied in the preliminary RIA that we prepared for our January 2007 proposed rule. Impacts for cattle for feeding or for immediate slaughter and impacts for beef are quantitatively modeled. Impacts for other affected commodities—breeding cattle including dairy, vealers and slaughter calves, bison, bovine casings and small intestine products, and bovine blood and blood products—are examined largely qualitatively. For the modeled cattle and beef, we project a 5-year baseline, 2008–2012, against which we measure expected price and welfare effects of projected levels of cattle and beef imports from Canada. We evaluate price and welfare effects for the three scenarios that were considered in the preliminary RIA, as follows:

- Scenario 1: Allow imports of Canadian cattle born on or after March 1, 1999;
- Scenario 2: Allow imports of Canadian cattle unrestricted by date of birth; and
- Scenario 3: The same as scenario 1, with the addition of the resumption of imports of beef from Canadian cattle

slaughtered at 30 months or older (called over-30-month, or OTM beef).

As a fourth scenario, we consider imports of Canadian cattle unrestricted by date of birth, with the resumption of OTM beef imports. Projected imports under this scenario 4 are described, but the expected impacts are not evaluated, for reasons explained below.

Beginning with baseline quantities and prices, we compute effects of the projected changes in imports from Canada for four commodity categories: Cull cattle/processing beef, feeder cattle, fed cattle, and fed beef. The resumption of cull cattle imports is expected to affect the slaughter mix in Canada, and that change in the slaughter mix will be reflected in changes in the mix of exports to the United States.

As part of this adjustment, for example, we expect that more fed steers and heifers will be slaughtered in Canada and fewer will be exported to the United States than if cull cattle imports were not reestablished. Canada's cattle inventory increased rapidly following the diagnosis of BSE in a Canadian cow in May 2003 and Canada's subsequent loss of export markets for cattle and beef. In response, Canada's slaughter capacity expanded. Beginning in July 2005, with the resumption of imports by the United States of Canadian feeder cattle and fed cattle, some Canadian plants continued to utilize their expanded slaughter capacity by shifting to increased cull cattle slaughter. Canadian cull cattle slaughter would likely continue to expand if the United States were to remain closed to imports of Canadian cull cattle. However, with this rule, we can expect some substitution in Canada of cull cattle slaughter by fed cattle slaughter.

Importation of fewer fed cattle from Canada, all things equal, will cause the price of fed cattle in the United States to rise. We estimate the expected increase in price and, because of the price rise, the decrease in the quantity of fed cattle demanded by U.S. slaughter and packing establishments and the increase in the quantity of fed cattle supplied by U.S. feedlots. The analysis yields measures of welfare change, which in this example are in terms of surplus losses for U.S. buyers and surplus gains for U.S. sellers of fed cattle.

For each of the first three scenarios, we compute impacts for the modeled commodities using the Baseline Analysis System (BAS) model.[29] Impacts are also summed for each scenario. The BAS model is a net trade, non-spatial partial equilibrium model. Partial equilibrium means that the model results are based on maintaining a commodity-price equilibrium in a limited portion of an overall economy. Commodities not explicitly included in the model are assumed to have a negligible influence on the results. The simple summation of the separate partial equilibrium results using the BAS model does not take into account market dynamics, but does provide a reasonable approximation of the combined welfare effects for each scenario.

We also examine impacts more broadly using a multi-sector model that takes into account substitution among livestock products in response to relative price changes.[30] This model maps interactions among the grain, animal, and animal products industries. It takes into account substitution among livestock products in response to relative price changes, incorporates foreign trade, and yields expected price and revenue effects. The simulated multi-sector impacts tend to be smaller than the BAS model results because the model linkages specified between the livestock production and processing sectors capture at least some of the flexibility that industry enterprises exhibit when adjusting to supply shocks. These results support our expectation that broader impacts of the rule will be limited.

Baseline quantities and prices and imports from Canada have been projected by staff of USDA ERS, Market and Trade Economics Division, Animal Products, Grains, and Oil Seeds Branch, based on their expert knowledge and reference to ''USDA Agricultural Baseline Projections to 2016,'' United States Department of Agriculture, Interagency Agricultural Projections Committee, Baseline Report OCE–2007–1, February 2007.[31]

Projected Imports From Canada

Scenario 1. Table A shows the projected changes in cattle and fed beef imports from Canada under scenario 1 (in which imports of Canadian cattle born on or after March 1, 1999, are allowed). Under this scenario, cull cattle imports from Canada are projected to total 104,000 head in 2008 and average 147,800 head over the 5-year period of analysis. These import numbers are considerably smaller than were projected in the preliminary RIA because we now have a better understanding of the extent to which the birth-date restriction and age-verification requirement may limit the number of cull cattle eligible for import. Annual declines in feeder cattle and fed cattle imports are projected to average 6,800 head and 56,800 head, respectively. These declines correspond to projected changes in the overall Canadian cattle inventory, with the import volumes for fed cattle further adjusted downward to reflect greater competition from Canadian packers due to the resumption of U.S. imports of cull cattle. Yearly fed beef imports are projected to increase by an average of 45.8 million pounds, carcass weight equivalent.

All of the changes under scenario 1 are small when compared to the commodities' projected U.S. baseline supplies. The changes in imports for feeder cattle, fed cattle, and fed beef imports, in particular, are projected to be only fractions of 1 percent of baseline supplies. Under scenario 1, the number of cull cattle projected to be imported in 2008 is less than 2 percent of projected U.S. baseline cull cattle slaughter quantities. Over the period of analysis, cull cattle imports are projected to average 2.5 percent of baseline quantities. Cull cattle imports are projected to increase in the latter years of the analysis, and even more so in subsequent years, as higher percentages of Canada's cull cattle inventory are able to be verified as having been born on or after March 1, 1999. A relative increase in the number of cull cattle imported over time is projected to be associated with, in turn, a relative decrease in the quantity of fed cattle imports and a relative increase in the quantity of fed beef imports.

Baseline projections over the 5-year period, 2008–2012, show the United States importing a little over 40 percent of its supply of processing beef. A share

[29] A complete description of the model is provided in: Forsythe, K.W. ''An Economic Model for Routine Analysis of the Welfare Effects of Regulatory Changes.'' V3.00. U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Centers for Epidemiology and Animal Health. April 20, 2005 (draft). *http://www.aphis.usda.gov/peer_review/content/printable_version/bas_model_econOnly_apr20.pdf*

[30] Four examples of studies based on this type of model are: Paarlberg, P.L., A.H. Seitzinger, and J.G. Lee, ''Economic Impacts of Regionalization of a Highly Pathogenic Avian Influenza Outbreak in the United States,'' *Journal of Agricultural and Applied Economics*, forthcoming. Paarlberg, P.L. ''Agricultural Export Subsidies and Intermediate Goods Trade,'' *American Journal of Agricultural Economics.* 77, 1(1995): 119–128. Paarlberg, P.L., J.G. Lee, and A.H. Seitzinger. ''Potential Revenue Impact of an Outbreak of Foot-and-Mouth Disease in the United States,'' *Journal of the American Veterinary Medical Association.* 220, 7(April 1, 2002): 988–992. Sanyal, K.K. and R.W. Jones. ''The Theory of Trade in Middle Products,'' *American Economic Review.* 72(1982): 16–31.

[31] *http://www.usda.gov/oce/commodity/ag_baseline.htm*

of the cull cattle imported from Canada will yield processing beef that will substitute for processing beef that otherwise would be imported from other countries, while a share of the imported cull cattle will yield processing beef that will replace a quantity of processing beef that would otherwise be domestically supplied, as U.S. producers respond to lower prices. The remaining share of cull cattle imports will yield processing beef that will represent a net increase in U.S. processing beef supplies.

We use 25 percent as the percentage of cull cattle imports from Canada projected to displace U.S. processing beef imports from elsewhere. The 25 percent share is estimated using the multi-sector model and takes into account the interactions of the beef processing sector with the beef cattle and dairy cattle sectors. For comparison, we also compute price and welfare effects assuming that 50 percent of cull cattle imported from Canada displace processing beef imports, and assuming, alternatively, that none of the imported cull cattle displace processing beef imports.

Scenario 2. In Table B, we show the projected changes in cattle and fed beef imports from Canada under scenario 2 (in which imports of Canadian cattle unrestricted by birth date are allowed). Under this scenario, imports of cull cattle and changes in imports of fed cattle and fed beef are all projected to be much larger than in scenario 1. Feeder cattle imports are projected to be the same under all of the scenarios. Projected cull cattle imports in scenario 2 average 459,800 head per year over the period of analysis, or 7.8 percent of U.S. baseline slaughter quantities. This amount is more than three times cull cattle imports projected in scenario 1. The fed cattle and fed beef changes remain a fraction of 1 percent of the U.S. baseline supplies, but are also larger. The increased number of cull cattle imported in this scenario is projected to be associated with larger declines in fed cattle imports and larger increases in the fed beef imports. We again estimate that 25 percent of cull cattle imports from Canada under this scenario displace processing beef imports from other sources. Price and welfare analyses assuming that 50 percent of the imported cull cattle displace processing beef imports and that none of the cull cattle displace processing beef imports are also presented.

Scenario 3. Table C shows the projected changes in cattle and beef imports from Canada under scenario 3 (in which imports of Canadian cattle born on or after March 1, 1999, are allowed and imports of OTM beef resume). In scenario 3, impacts derive from the resumption of OTM beef imports as well as the cull cattle imports from Canada. Projected cull cattle imports are lower than in scenario 1 (averaging 106,000 head per year over the 5-year period, compared to 147,800 head) because of the entry of OTM beef. Similarly, changes in projected fed cattle and fed beef imports are somewhat smaller than the changes projected in scenario 1. Processing beef imports from Canada under scenario 3 are projected to average 254.6 million pounds per year, carcass weight equivalent, or about 4.1 percent of the U.S. baseline supply. The quantity of processing beef imported is projected to decline and the quantity of cull cattle imported is projected to increase in the latter years of the 5-year period, as an increasing number of cull cattle become eligible for importation—i.e., can be verified as having been born on or after March 1, 1999. Under scenario 3, and considering imports of cull cattle (based on the cattle's processing beef equivalence) and processing beef as a single market, 77 percent of cull cattle and processing beef imports from Canada are projected to enter the United States as OTM beef over the 5-year period of the analysis, while 23 percent of these imports are projected to enter as cull cattle. Consistent with scenarios 1 and 2, we use 25 percent as the share of the cull cattle and OTM beef imports from Canada that displaces processing beef imports from other countries. We also present the price and welfare effects assuming that either 50 percent or none of the cull cattle and OTM beef imports from Canada displace processing beef imports from elsewhere.

Scenario 4. In table D, we show the projected changes in cattle and fed beef imports from Canada under scenario 4 (in which imports of Canadian cattle unrestricted by birth date are allowed and imports of OTM beef resume). As in scenario 2, imports of cull cattle and changes in imports of fed cattle and fed beef are all projected to be larger than in scenarios 1 and 3.

Projected cull cattle imports in scenario 4 average 328,200 head per year over the period of analysis, or 5.5 percent of U.S. baseline slaughter quantities. The fed cattle and fed beef changes remain a fraction of 1 percent of the U.S. baseline supplies.

TABLE A.—PROJECTED CHANGES IN IMPORTS OF CULL CATTLE, FEEDER CATTLE, FED CATTLE, FED BEEF, AND PROCESSING BEEF FROM CANADA UNDER SCENARIO 1, AND PROJECTED CHANGES IN IMPORTS FROM CANADA AS A PERCENTAGE OF THE PROJECTED U.S. BASELINE SUPPLIES, 2008–2012

	2008	2009	2010	2011	2012
Projected changes in imports from Canada:					
Cull cattle (thousand head)	104	110	113	187	225
Feeder cattle (thousand head)	−1	9	−5	−16	−21
Fed cattle (thousand head)	−30	−4	−43	−93	−114
Fed beef (million pounds, carcass weight equivalent)	24	3	35	75	92
Processing beef (million pounds, carcass weight equivalent)	0	0	0	0	0
Projected changes in imports from Canada as a percentage of the projected U.S. baseline supply:					
Cull cattle	1.8%	1.9%	1.9%	3.1%	3.7%
Feeder cattle	nil	nil	nil	nil	−0.1%
Fed cattle	−0.1%	nil	−0.1%	−0.3%	−0.4%
Fed beef	0.1%	nil	0.2%	0.3%	0.4%
Processing beef	0	0	0	0	0

TABLE B.—PROJECTED CHANGES IN IMPORTS OF CULL CATTLE, FEEDER CATTLE, FED CATTLE, FED BEEF, AND PROCESSING BEEF FROM CANADA UNDER SCENARIO 2, AND PROJECTED CHANGES IN IMPORTS FROM CANADA AS A PERCENTAGE OF THE PROJECTED U.S. BASELINE SUPPLIES, 2008–2012

	2008	2009	2010	2011	2012
Projected changes in imports from Canada:					
Cull cattle (thousand head)	459	459	459	460	462
Feeder cattle (thousand head)	−1	9	−5	−16	−21
Fed cattle (thousand head)	−119	−91	−129	−161	−173
Fed beef (million pounds, carcass weight equivalent)	96	74	105	131	140
Processing beef (million pounds, carcass weight equivalent)	0	0	0	0	0
Projected changes in imports from Canada as a percentage of the projected U.S. baseline supply:					
Cull cattle	8.2%	7.8%	7.6%	7.6%	7.6%
Feeder cattle	nil	nil	nil	nil	−0.1
Fed cattle	−0.4%	−0.3%	−0.4%	−0.5%	−0.6%
Fed beef	0.4%	0.3%	0.5%	0.6%	0.6%
Processing beef	0	0	0	0	0

TABLE C.—PROJECTED CHANGES IN IMPORTS OF CULL CATTLE, FEEDER CATTLE, FED CATTLE, FED BEEF, AND PROCESSING BEEF FROM CANADA UNDER SCENARIO 3 AND PROJECTED CHANGES IN IMPORTS FROM CANADA AS A PERCENTAGE OF THE PROJECTED U.S. BASELINE SUPPLIES, 2008–2012

	2008	2009	2010	2011	2012
Projected changes in imports from Canada:					
Cull cattle (thousand head)	75	79	81	134	161
Feeder cattle (thousand head)	−1	9	−5	−16	−21
Fed cattle (thousand head)	−23	4	−34	−80	−98
Fed beef (million pounds, carcass weight equivalent)	18	−3	28	65	79
Processing beef (million pounds, carcass weight equivalent)	277	273	272	234	217
Projected changes in imports from Canada as a percentage of the projected U.S. baseline supply:					
Cull cattle	1.3%	1.3%	1.3%	2.2%	2.7%
Feeder cattle	nil	nil	nil	nil	−0.1
Fed cattle	−0.1%	nil	−0.1%	−0.3%	−0.3%
Fed beef	0.1%	nil	0.1%	0.3%	0.3%
Processing beef	4.7%	4.5%	4.4%	3.7%	3.4%

TABLE D.—PROJECTED CHANGES IN IMPORTS OF CULL CATTLE, FEEDER CATTLE, FED CATTLE, FED BEEF, AND PROCESSING BEEF FROM CANADA UNDER SCENARIO 4, AND PROJECTED CHANGES IN IMPORTS FROM CANADA AS A PERCENTAGE OF THE PROJECTED U.S. BASELINE SUPPLIES, 2008–2012

	2008	2009	2010	2011	2012
Projected changes in imports from Canada:					
Cull cattle (thousand head)	328	328	327	328	330
Feeder cattle (thousand head)	−1	9	−5	−16	−21
Fed cattle (thousand head)	−86	−58	−96	−129	−140
Fed beef (million pounds, carcass weight equivalent)	70	47	78	104	114
Processing beef (million pounds, carcass weight equivalent)	94	94	94	94	95
Projected changes in imports from Canada as a percentage of the projected U.S. baseline supply:					
Cull cattle	5.8%	5.6%	5.4%	5.4%	5.4%
Feeder cattle	nil	nil	nil	nil	−0.1%
Fed cattle	−0.3%	−0.2%	−0.3%	−0.4%	−0.5%
Fed beef	0.3%	0.2%	0.3%	0.5%	0.5%
Processing beef	1.6%	1.5%	1.5%	1.5%	1.5%

Effects for Commodities Not Analyzed Using the BAS Model

Five categories of commodities that will be affected by this rule have not been included in the modeled quantitative analysis described above. They are: Breeding cattle, including dairy; vealers and slaughter calves; bison; bovine casings and small intestine products; and bovine blood and blood products. Projected imports of breeding cattle including dairy, and projected changes in imports of vealers, slaughter calves, and bison, are relatively small, suggesting that impacts on affected U.S. entities will not be significant. For bovine casings, small intestine products, and blood and blood products, the analysis is constrained by a scarcity of information about the quantities that would be imported and levels of U.S. production and consumption.

With regard to dairy producers, we do not expect imports of dairy cattle from Canada to add significantly to the U.S. herd, but rather to serve as an additional source of replacement animals. From 1992 to 2002, U.S. producers annually raised about 4.1 million dairy replacement heifers and about 5.9 million beef replacement heifers. The average number of Canadian breeding cattle imported during that period (including bulls) totaled only 0.5 percent of these combined quantities. The breeding cattle imports from Canada during this period represented about 1.1 percent of dairy heifer replacements and less than 0.1 percent of beef heifer replacements. Imports of dairy cows and heifers from Canada are projected to be similar to their historic levels, 1992–2002, averaging 47,800 head per year over the period of analysis in all of the scenarios.

Analysis using the multi-sector model indicates that, in scenario 3, dairy producers may experience price declines of 1.3 to 1.7 percent for dairy cattle due to the small number projected to be imported from Canada. These imports translate into an increase in U.S. milk production of 0.1 percent or less, and a decline in the price of milk and increase in consumer surplus of less than 0.1 percent. As sellers of cull cattle, dairy producers as well as beef producers are expected to be negatively affected by the price decline for cull cattle due to this rule.

We expect market effects for vealers and slaughter calves to be insignificant, given the small change in the number projected to be imported from Canada. The decline in imports is projected in scenario 3 to average only 6 percent, or 3,000 head per year.

A larger number of bison are projected to be imported than was projected in the preliminary RIA. Reestablished imports of Canadian breeding bison will be the principal impact of this rule for that industry. Yearly imports of breeding bison are projected to average 1,200 head, and are expected to represent about 1 percent of U.S. breeding bison, assuming the composition of the national bison herd is similar to that of the national cattle herd.

This rule may directly affect the U.S. supply of bovine casings and small intestine products through resumption of imports from Canada, and may affect it indirectly through changes in U.S. cattle slaughter numbers and the reestablished importation of Canadian bovine small intestines, minus the distal ileum. For scenario 3, the annual supply of bovine casings produced from additional U.S. cattle slaughter is projected to increase on average over the period of analysis by less than 0.2 percent.

Fetal bovine serum (FBS) is the most important blood product that will be affected by this rule. Resumption of commercial imports of FBS from Canada, directly as serum and indirectly through increased U.S. pregnant cow slaughter, is expected to benefit FBS users, given current strong demand for this blood product in the United States.

Expected Impacts for Modeled Commodities

In this summary, prices and welfare impacts are expressed in 2007 dollars; price and quantity averages and percentage averages are over the 5-year period of analysis, 2008–2012; annualized values are discounted at 3 percent; and beef prices and quantities are in carcass weight equivalent. Percentage changes in prices and estimated welfare effects are shown in table E.

Scenario 1. In this scenario, buyers of cull cattle and processing beef can be expected to benefit from welfare gains and sellers of cull cattle and processing beef can be expected to bear welfare losses due to the cull cattle imports. For this commodity, the estimated annualized consumer gains are $90.3 million, producer losses are $53.2 million, and net benefits are $37.1 million.

Welfare changes for the cull cattle/processing beef category dominate the modeled effects in all of the scenarios. The relatively large impacts are not unexpected, given that this is the one modeled commodity category for which imports from Canada would be newly reestablished and projected changes from the baseline are much larger than for the other commodities. The numbers of cull cattle projected to be imported in scenario 1, averaging 124,800 cows and 23,000 bulls and stags per year, are much larger than the projected average annual declines in imports of Canadian fed cattle (56,800 head) and feeder cattle (6,800 head).

Another reason the welfare effects computed for the cull cattle/processing beef category are large is the inelastic demand (−0.40) compared to the price elasticities of demand—i.e., buyers' responsiveness to changes in price—for the other modeled commodities (feeder cattle, –0.88; fed cattle, −0.76; fed beef, −0.60). In the preliminary RIA, we examined the significance of processing beef's more inelastic demand by considering welfare changes for the cull cattle/processing beef category when a price elasticity of demand of −0.60 is used, that is, the same elasticity as for fed beef. This exercise found that all impacts—consumer gains, producer losses, net benefits, and price declines—are reduced by nearly one-fifth when a price elasticity of demand of −0.60 is used in place of −0.40. The price elasticity of demand is an important determinant of the magnitude of welfare and price changes for the cull cattle/processing beef category.

Lastly, the large difference between consumer welfare gains and producer welfare losses for the cull cattle/processing beef category can be attributed to the fact that the United States is projected to import about 40 percent of its supply of processing beef over the period of analysis. In modeling the welfare effects, demand (defined as U.S. consumption) is much larger than supply (defined as U.S. production minus exports). Consequently the change in consumer surplus is large compared to the change in producer surplus because the effects are estimated only for U.S. entities.

Slightly fewer feeder cattle are projected to be imported from Canada in scenario 1 than would otherwise enter, and the analysis indicates small gains in producer welfare (higher prices and less competition from Canadian suppliers) and small losses in consumer welfare for this commodity (higher prices and fewer feeder cattle available for purchase). Estimated annualized values are producer gains of $3.6 million, consumer losses of $3.8 million, and net losses of $0.2 million.

As with feeder cattle, fewer fed cattle are projected to be imported under scenario 1 than would otherwise be imported. Once again, producers (sellers of fed cattle for slaughter) would benefit from welfare gains and consumers (buyers of fed cattle for slaughter) would bear welfare losses. Estimated annualized values are producer gains of $43.6 million, consumer losses of $44.7 million, and net losses of about $1.1 million.

Scenario 1 is projected to result in increased imports of Canadian fed beef ranging from an additional 3 million pounds in 2009 to 92 million pounds in 2012. Estimated annualized values are consumer gains of $48.8 million, producer losses of $46.8 million, and net gains of $2 million.

The analysis shows annualized combined welfare changes under scenario 1 as consumer gains of $90.6 million and producer losses of $52.7 million, yielding net benefits of $37.9 million. As can be seen in table E, the combined annualized values of consumer welfare losses for feeder cattle and fed cattle are similar to the consumer welfare gains for fed beef. Combined consumer welfare gains are very similar to the consumer welfare gains estimated for the cull cattle/processing beef category. A similar but opposite outcome is evident with respect to producer welfare changes, with combined gains for feeder cattle and fed cattle somewhat larger than the producer welfare losses for fed beef. The result is combined producer welfare losses that are close to the producer welfare losses estimated for cull cattle/processing beef. Under scenario 1, the combined annualized net welfare benefits, $37.9 million, are only slightly more than the $37.1 million in net benefits estimated for cull cattle/processing beef.

TABLE E.—COMPARISON OF PERCENTAGE PRICE CHANGES AND ANNUALIZED WELFARE EFFECTS FOR SCENARIOS 1, 2, AND 3 BY COMMODITY CATEGORY, 2008–2012, DISCOUNTED AT 3 PERCENT, 2007 DOLLARS

Commodity category	Scenario	Percentage change in price	Change in consumer welfare	Change in producer welfare	Net welfare change
			Thousand dollars		
Cull cattle/Processing beef	1	−1.4%	90,307	−53,207	37,100
	2	−4.5%	286,936	−165,615	121,320
	3	−4.5%	286,912	−165,603	121,308
Feeder cattle	1	nil	−3,795	3,605	−190
	2	nil	−3,795	3,605	−190
	3	nil	−3,795	3,605	−190
Fed cattle	1	0.1%	−44,703	43,636	−1,066
	2	0.3%	−107,513	105,101	−2,412
	3	0.1%	−36,263	35,388	−874
Fed beef	1	−0.1%	48,800	−46,757	2,044
	2	−0.3%	117,459	−112,426	5,033
	3	−0.1%	39,791	−38,131	1,660
Categories combined	1		90,609	−52,723	37,888
	2		293,087	−169,335	123,751
	3		286,645	−164,741	121,904

The three import scenarios considered in this table are (1) Canadian cattle born on or after March 1, 1999; (2) Canadian cattle unrestricted by date of birth; and (3) Canadian cattle born on or after March 1, 1999, plus resumption of imports of meat from Canadian cattle slaughtered at 30 months or older. The percentage change in price is the average annual change over the 5-year period. Welfare changes may not sum due to rounding.

Scenario 2. Because of the significantly larger number of cull cattle projected to be imported in scenario 2, the estimated price and welfare effects are also much larger than for scenario 1. Table E shows these differences, with the percentage changes in price about three times greater in all cases (other than for feeder cattle, for which imports are projected to be the same in all scenarios). Whereas the combined net benefit in scenario 1 is estimated to be an annualized $37.9 million, in scenario 2 it is $123.8 million.

As described in the risk assessment, transmission of BSE requires that bovines ingest feed that contains the infectious agent. The OIE establishes standards for the international trade in animals and animal products. It recommends that cattle be imported from a controlled risk region for BSE only if the cattle selected for export were born after that date from which a ban on the feeding of ruminants with meat-and-bone meal and greaves (the residue left after animal fat or tallow has been rendered) derived from ruminants had been effectively enforced. In May 2007, the OIE classified both the United States and Canada as BSE controlled risk regions.

On August 4, 1997, Canada issued regulations prohibiting the use of mammalian protein in ruminant feeds. Implementation of the feed ban was a gradual process, with producers, feed mills, retailers, and feed manufacturers given grace periods before they were required to be in full compliance with the regulations. It is believed that this implementation period may have lasted 6 months, making February 1998 a more realistic date on which the ban can be considered to have gone into effect.

APHIS considers that a period of 1 year following the full implementation of the feed ban allowed sufficient time for the measures taken by Canada to have their desired effect. Therefore, APHIS concludes that there is an extremely low likelihood that cattle born in Canada on or after March 1, 1999, will have been exposed to the BSE agent via feed. Therefore, these animals have an extremely low likelihood of being infected and can be imported into the United States for any purpose.

We do not have a quantitative estimate of the additional risk posed by importation of Canadian cattle born before March 1, 1999. The importance of a feed ban as a risk mitigation measure is demonstrated in science and experience, and is incorporated into the OIE guidelines. We conclude that there could be some degree of increased likelihood of BSE infectivity entering the United States via imports of live bovines from Canada under scenario 2, compared to the very low likelihood posed in scenario 1, because of the greater likelihood of cattle born prior to the effective enforcement of a feed ban having been exposed to infectivity.

Scenario 3. The price and welfare effects under scenario 3 are similar to the effects under scenario 2 for cull cattle/processing beef, but more like the scenario 1 effects for fed cattle and fed beef (table E). This outcome is expected because scenario 3 includes reestablishment of OTM beef imports from Canada. Combined net welfare benefits for scenarios 2 and 3 are very similar, with the projected cull cattle imports in scenario 2 and the projected imports of cull cattle and OTM beef in scenario 3 both based on cattle and beef import quantities prior to May 2003. The additional quantities of cull cattle/processing beef in scenarios 2 and 3 are essentially the same, entering as live cattle in scenario 2 and as beef in scenario 3.

The BSE risk mitigations under scenario 3 are comparable to those under scenario 1. The restriction on live bovine imports by date of birth, age verification, and other safeguard measures are the same in both cases. Consequently, as in scenario 1, the likelihood of BSE infectivity entering the United States via imports of live bovines from Canada in this scenario is extremely low. Resumption of OTM beef imports from Canada will not affect the likelihood of BSE infectivity entering the United States because SRMs will be removed and disposed of in Canada.

Scenario 4. A fourth scenario, as indicated above, would be to allow entry of Canadian cattle unrestricted by birth date, along with resumption of OTM beef imports from Canada. A quantitative analysis of expected price and welfare effects for this particular scenario was not performed. When we compare projected imports under this scenario with those projected for scenario 3, we find the differences in combined cattle and beef imports to be very small and conclude that the welfare effects for this scenario would be very similar to the effects of scenario 3.

Cull cattle imports from Canada are projected to average about 328,000 head per year under scenario 4, compared to 106,000 head per year under scenario 3. Conversely, annual processing beef imports under scenario 4 are projected to average 94 million pounds, carcass weight equivalent, compared to 255 million pounds for scenario 3.

Similar differences between the two scenarios are projected for fed cattle and fed beef imports. The larger number of cull cattle that would be imported from Canada under scenario 4 could be expected to be associated with increased fed cattle slaughter in Canada, with fewer fed cattle and more fed beef exported to the United States. Under scenario 4, fed cattle imports from Canada are projected to average about 624,000 head per year, compared to 679,000 head per year under scenario 3. Annual fed beef imports under scenario 4 are projected to average 992 million pounds, compared to 947 million pounds for scenario 3.

The average annual net difference between scenarios 3 and 4 in projected cull cattle and processing beef imports from Canada, after converting the cull cattle to processing beef, is about 700,000 pounds (330.8 million pounds in scenario 3, and 330.1 million pounds in scenario 4). This amount represents about 0.2 percent of projected cull cattle/processing beef imports under scenario 3. For fed cattle and fed beef imports from Canada, the average annual net difference between scenarios 3 and 4 after converting the fed cattle to fed beef, is about 1.3 million pounds (1,483.7 million pounds in scenario 3, and 1,485.0 million pounds in scenario 4). This amount represents about 0.1 percent of the projected fed cattle and fed beef imports under scenario 3. Hence, we conclude that the overall welfare effects of scenario 4 would be very similar to those for scenario 3.

Effects on Small Entities

There were no significant issues raised in public comment on the initial regulatory flexibility analysis (RFA) for this rulemaking. However, as described below, the majority of businesses that may be affected by this rule are small entities. Therefore, while none of the comments received on the proposed rule raised specific issues regarding the initial RFA, comments on the preliminary RIA can be inferred to express small-entity concerns.

Topics that received public comment and that concerned the estimated economic impacts of the proposed rule included modeling issues; the timing of the rule's implementation; consequences of a BSE occurrence; and impacts of the rule for consumers, cow-calf producers, the dairy industry, and the packing industry, and on beef exports. These comments are addressed in the Agency's responses that are included as part of the final rule.

Small entities comprise the majority of the establishments engaged in the production, processing, and sale of the commodities affected by this rule. These small entities number at least in the hundreds of thousands, with cow-calf and dairy producers comprising the largest single industry sector share. The entities are classified within the following industries according to the North American Industry Classification System: Beef Cattle Ranching and Farming (NAICS 112111), Dairy Cattle and Milk Production (NAICS 112120), All Other Animal Production (NAICS 112990), Cattle Feedlots (NAICS 112112), Animal (except Poultry) Slaughtering (NAICS 311611), Meat Processed from Carcasses (NAICS 311612), Meat and Meat Product Merchant Wholesalers (NAICS 424470), Supermarkets and Other Grocery (except Convenience) Stores (NAICS 445110), Meat Markets (NAICS 445210), In-Vitro Diagnostic Substance Manufacturing (NAICS 325413), and Biological Product (except Diagnostic) Manufacturing (NAICS 325414).

We are unable to determine the extent to which cull cattle prices may fall because of the rule. Assuming that the price decline for cull cattle is proportional to the estimated price decline for processing beef, cow-calf and dairy producers in scenario 3 may experience a fall in price for cull cattle of 4.7 percent in 2008, and an average price decline of 4.5 percent ($4.61 per cwt). To place this average price decline in perspective, we consider the effect it may have on gross earnings of small-entity cow-calf operations. Based on data from the 2002 Census of Agriculture, the average value of cattle and calves sold by small-entity beef cow operations was about $26,600.[32] The projected 2008 price for a culled cow is $54.19 per cwt.[33] Assuming the cow weighs 1,100 pounds, its price in 2008 would be $596.09 per head. A 4.7 percent decline would result in a price of $568.07. Presumably, most of a cow-calf operation's revenue is earned from the sale of calves. If one-half of an operation's revenue were to derive from the sale of cull cattle, the reduction in revenue attributable to the decline in the price of cull cattle in scenario 3 would total about $625 for the year.[34]

For dairy enterprises, the expected price decline for cull cattle because of imports from Canada is expected to have a small effect on their incomes because most revenue (over 86 percent in 2002) is earned from the sale of milk and other dairy products.[35] The average per animal value of cattle and calves sold by small-entity dairy cow operations in 2002 was about $453. A price decline of 4.7 percent, notwithstanding the fact that not all of the animals sold would be cull cattle, would mean a decrease in annual revenue for the average small-entity dairy operation of about $1,040, assuming no change in the number of cattle sold.[36] This forgone income would represent a decline in average revenue of about 0.6 percent.[37]

The scenario 3 analysis indicates that decreases in the price of fed beef due to increased fed beef imports from Canada are expected to be very small, resulting in a loss for the average meat packing and processing establishment of less than 0.2 percent of average revenue (18 cents per cwt, with projected baseline fed beef prices averaging $151.80 per cwt). Effects for those packers and processors that utilize processing beef will be larger, due to the resumption of cull cattle and OTM beef imports from

[32] USDA, NASS. 2002 Census of Agriculture, Volume 1, Chapter 1, Table 16. The $26,000 average is for operations with fewer than 1,000 head. *http://www.nass.usda.gov/Census_of_Agriculture/index.asp*

[33] Boning utility cow (Sioux Falls) nominal price.

[34] ($26,600/2) (0.047) = $625.10.

[35] USDA, NASS, 2002 Census of Agriculture, Volume 1, Chapter 1, Table 17. For small-entity producers, revenue from cattle and calf sales totaled $1.7 billion and revenue from dairy product sales totaled $11.2 billion. *http://www.nass.usda.gov/Census_of_Agriculture/index.asp*

[36] In 2002, the average revenue from cattle sales for small-entity dairy operations was $22,197 ($453 per head multiplied by 49 head). ($22,197)(0.047) = $1,043.26.

[37] $1,043 divided by $175,912 (average income for small dairy farms from combined dairy product and cattle sales) equals 0.59 percent.

Canada. Annual prices of processing beef are expected to fall by an average of $4.61 per cwt in scenario 3. This decline in price will benefit establishments that use processing beef to produce ground beef for the wholesale market. Conversely, establishments that sell processing beef will be negatively affected by the expected price decline.

In response to public comments on the preliminary RIA, we include an evaluation of welfare effects by industry sector for scenario 3. While this evaluation is admittedly broad, it provides an indication of the extent to which major sectors of the cattle and beef industries may be affected. We group the entities that we expect to be directly affected into four generalized categories: cow-calf and dairy producers, feedlot establishments, slaughter and packing establishments, and wholesaler and successive establishments. Admittedly, this simple categorization does not capture the many complexities of the cattle and beef industries, but it does provide a level of specification sufficient for examining expected effects for the industries' principal stages of economic activity. In reality, businesses combine the slaughter, packing, processing, and wholesaling functions in various ways. This consideration of sector-level effects indicates that cow-calf and dairy producers and slaughter and packing establishments are expected to incur net welfare losses, while feedlots and wholesalers are expected to accrue net welfare gains.

Currently, bovines imported from Canada are restricted to animals that are slaughtered at less than 30 months of age. Bovines not imported for immediate slaughter must be moved from the port of entry to a feedlot in a sealed means of conveyance and from the feedlot to a recognized slaughtering establishment again in a sealed means of conveyance. The animals may not be moved to more than one feedlot. With this rule, these movement restrictions will no longer be imposed. Canadian bovines imported other than for immediate slaughter will be able to be moved any number of times to any destinations in unsealed means of conveyance.

Under this rule, feeder bovines imported from BSE minimal-risk regions will not need to be accompanied by APHIS Form VS 17–130, which currently is used to identify the feedlot of destination. (The name of the individual responsible for the movement of an imported animal and individual identification of the animal will still be required information on the accompanying health certificate.) APHIS estimates that the time saved by entities no longer needing to acquire APHIS Form VS 17–130 will total approximately 40,000 hours per year.[38] Also under this rule, bovines of Canadian origin moved from a U.S. feedlot to a slaughtering establishment will not need to be accompanied by APHIS Form VS 1–27. APHIS estimates the same total time savings by entities no longer needing to acquire APHIS Form VS 1–27: 40,000 hours per year.

Removal of these movement and paperwork requirements will benefit buyers and sellers of Canadian-origin bovines. Many of the beneficiaries are likely to be small entities, given their predominance among beef and dairy operations and feedlot establishments. Affected businesses will be able to take advantage of a broader range of transactional opportunities than previously. For example, the sale of a young steer first for backgrounding, then for confined feeding at one or more facilities, and finally for slaughter may enable the original and subsequent owners of the animal to better maximize returns compared to current marketing possibilities. While we are not able to quantify impacts of removing current movement restrictions on Canadian cattle imports, we expect their removal will benefit the cattle industry across-the-board.

The Agency has identified alternatives to the rule and analyzed them in this RIA. We have found that the chosen alternative (scenario 3) best strikes the balance of continuing to provide an acceptable level of protection against BSE infectivity entering the United States via imports of live bovine and bovine product imports, while removing unnecessary prohibitions on the importation of certain commodities from Canada. Without this rule, restrictions on U.S. importation of certain Canadian bovine commodities that are without scientific merit would continue. With this rule, importation of these Canadian commodities will be allowed to resume under certain conditions and the BSE risk to the United States via imports of live bovines and bovine products from Canada will be negligible.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule has been designated by the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, as a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808). Accordingly, the effective date of this rule has been delayed the required 60 days pending congressional review.

Executive Order 12988

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

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the importation of live bovines and of bovine products as specified in this rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Decisionmaker of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the APHIS Web site (*http://www.aphis.usda.gov/newsroom/hot_issues/bse/index.shtml*), or be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by

[38] This approximation is based on 1,000 entities filling out Form VS 17–130 on 20 occasions per year, with each form requiring two hours. The estimated total time saved by not having to complete Form VS 1–27 is calculated on this same basis.

writing to the individuals listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

References

Abrial, D., D. Calavas, N. Jarrige, and C. Ducrot. (2005). Poultry, pig and the risk of BSE following the feed ban in France—A spatial analysis. Veterinary Research. 36(4): 615–628.

Andrews, N.J. (2007). Incidence of Variant Creutzfeldt-Jakob Disease Deaths in the UK, January 1994–December 2006. National Creutzfeldt-Jakob Disease Surveillance Unit, University of Edinburgh. (*www.cjd.ed.ac.uk/vcjdqdec06.htm*)

Animal and Plant Health Inspection Service (APHIS). (2004). Analysis of risk—update for the Final Rule: Bovine spongiform encephalopathy; minimal risk regions and importation of commodities, page 15. December. (*http://www.aphis.usda.gov/newsroom/hot_issues/bse/background*)

Animal and Plant Health Inspection Service (APHIS). (2004a). Economic Analysis, Final Rule: Bovine spongiform encephalopathy; minimal risk regions and importation of commodities; APHIS Docket No. 03–080–3. December. (*http://www.aphis.usda.gov/newsroom/hot_issues/bse/background*)

Animal and Plant Health Inspection Service (APHIS). (2005). Final Rule: bovine spongiform encephalopathy; minimal-risk regions and importation of commodities. **Federal Register**, Volume 70, Docket No. 03–080–3, pages 459–553. January 4. (*http://www.aphis.usda.gov/newsroom/hot_issues/bse/background*)

Animal and Plant Health Inspection Service (APHIS). (2005a). Finding of No Significant Impact, bovine spongiform encephalopathy; minimal-risk regions and importation of commodities. Final rule; APHIS, Docket No. 03–080–3. (*http://www.aphis.usda.gov/newsroom/hot_issues/bse/background*)

Animal and Plant Health Inspection Service (APHIS). (2006). Importation of Certain Additional Commodities from BSE Minimal-risk Regions (Canada). Environmental Assessment. October 27. (*http://www.aphis.usda.gov/newsroom/hot_issues/bse/index.shtml*)

Animal and Plant Health Inspection Service (APHIS). (2006a). An Estimate of the Prevalence of BSE in the United States. (*http://www.aphis.usda.gov/newsroom/hot_issues/bse/downloads/BSEprev-estFINAL_7–20–06.pdf*)

Animal and Plant Health Inspection Service (APHIS). (2006b). Assessment of Bovine Spongiform Encephalopathy (BSE) risks associated with the importation of certain commodities from BSE minimal risk regions (Canada). (*http://www.aphis.usda.gov/newsroom/hot_issues/bse/downloads/RiskAssessment06–041–1%20.pdf*)

Animal and Plant Health Inspection Service (APHIS). (2006c). Attachment 1: Estimation of BSE Prevalence in Canada. (*http://www.aphis.usda.gov/newsroom/hot_issues/bse/downloads/BSE_Prevalence.pdf*)

Animal and Plant Health Inspection Service (APHIS). (2007). Revised assessment of Bovine Spongiform Encephalopathy (BSE) risks associated with the importation of certain commodities from BSE minimal risk regions (Canada). (*http://www.aphis.usda.gov/newsroom/hot_issues/bse/index.shtml*)

Animal and Plant Health Inspection Service (APHIS). (2007a). Revised assessment of Bovine Spongiform Encephalopathy (BSE) risks associated with the importation of certain commodities from BSE minimal risk regions (Canada). Attachment 2. (*http://www.aphis.usda.gov/newsroom/hot_issues/bse/index.shtml*)

Arnold, M., and J. Wilesmith. (2004). Estimation of the Age-Dependent Risk of Infection to BSE of Dairy Cattle in Great Britain. Preventive Veterinary Medicine. 66(1): 35–47.

Beringue, V., A. Bencsik, A. Le Dur, F. Reine, T. Lan Lai, N. Chenais, G. Tilly, A.-G. Biacabe, T. Baron, J.-L. Vilotte, and H. Laude. (2006). Isolation from cattle of a prion strain distinct from that causing bovine spongiform encephalopathy. PLoS Pathogens 2(10):e112. October 20.

Bishop, M., P. Hart, *et al.* (2006). Predicting susceptibility and incubation time of human-to-human transmission of vCJD. Lancet Neurology 5. pp. 393–398. Published online March 27.

Bonnardière, C.L., D. Calavas, D. Abrial, E. Morignat, C. Ducrot. (2004). Estimating the trend of the French BSE epidemic over six birth cohorts through the analysis of abattoir screening in 2001 and 2002. Veterinary Research. 35(3): 299–308.

Bradley, R., and P. Liberski. (2004). Bovine Spongiform Encephalopathy (BSE): The end of the beginning or the beginning of the end? Folia Neuropathologica Supplement A. (2004). pp. 55–68.

Brester, Gary W., J.M. Marsh, and B. Grant, ‘‘The Impacts of Resuming Canadian Cull Cow and Processing Beef Imports on U.S. Cull Cow Prices.’’ Montana State University, Agricultural Marketing Policy Center, Briefing Number 84, February 2007.

Buschmann, A., and M. Groschup (2005). Highly Bovine Spongiform Encephalopathy-Sensitive Transgenic Mice Confirm the Essential Restriction of Infectivity to the Nervous System in Clinically Diseased Cattle. The Journal of Infectious Diseases, 192: 934–42. September 1.

Buschmann, A., A. Gretzschel, A.-G. Biacabe, K. Schiebel, C. Corona, C. Hoffmann, M. Eiden, T. Baron, C. Casalone, and M.H. Groschup. (2006). Atypical BSE in Germany—Proof of transmissibility and biochemical characterization. Veterinary Microbiology 117(2–4):103–116.

Canadian Cattle Identification Agency (CCIA). (2006). CCIA News. Winter.

Canadian Food Inspection Agency (CFIA). (2005). Canadian Food Inspection Agency Feed Ban Review. March 2. (*http://www.inspection.gc.ca/english/anima/feebet/rumin/revexa/revexae.shtml*)

Canadian Food Inspection Agency (CFIA). (2006). Canada’s Assessment of the North American BSE Cases Diagnosed from 2003–2005 (Part II). January 23. (*http://www.inspection.gc.ca/english/anima/heasan/disemala/bseesb/eval2005/evale.shtml*). Page last accessed July 3, 2007.

Canadian Food Inspection Agency (CFIA). (2006a). Bovine Spongiform Encephalopathy (BSE) in North America. Accessed October 13, 2006. (*http://www.inspection.gc.ca/english/anima/heasan/disemala/bseesb/bseesbindexe.shtml*)

Canadian Food Inspection Agency (CFIA). (2007). Report on the Investigation of the Ninth Case of Bovine Spongiform Encephalopathy (BSE) in Canada. (*http://www.inspection.gc.ca/english/anima/heasan/disemala/bseesb/ab2007/9investe.shtml*). Accessed May 23, 2007.

Casalone, C., G. Zanusso, P. Acutis, S. Ferrari, L. Capucci, F. Tagliavini, S. Monaco, and M. Caramelli. (2004). Indentification of a second bovine amyloidotic spongiform encephalopathy: Molecular similarities with sporadic Creutzfeldt-Jakob disease. Proceedings of the National Academy of Sciences 101(9):3065–3070.

Castilla, J., P. Saa, and C. Soto. (2005). Detection of prions in blood. Nature Medicine 11(9):982–985.

Clarke, P., and A. Ghani. (2005). Projections of the future course of the primary vCJD epidemic in the UK: inclusion of subclinical infection and the possibility of wider genetic susceptibility. Journal of the Royal Society Interface 2(2): 19–31. March 22.

Coffey, B., J. Mintert, S. Fox, T. Schroeder, and L. Valentin. ‘‘The Economic Impact of BSE on the U.S. Beef Industry: Product Value Losses, Regulatory Costs, and Consumer Reactions.’’ Kansas State University Agricultural Experiment Station and Cooperative Extension Service, MF–2678, April 2005.

Cohen, J., K. Duggar, G. Gray, S. Kreindel, H. Abdelrahman, T. Habtemariam, D. Oryang, and B. Tameru. (2001). Evaluation of the Potential for Bovine Spongiform Encephalopathy in the United States. November 26.

Cohen, J., K. Duggar, G. Gray, S. Kreindel, H. Abdelrahman, T. Habtemariam, D. Oryang, and B. Tameru. (2003). Evaluation of the Potential for Bovine Spongiform Encephalopathy in the United States. Revised October. (*http://www.aphis.usda.gov/newsroom/hot_issues/bse/background*)

Cohen, J.T., and G.M. Gray. (2005) Harvard Risk Assessment of Bovine Spongiform Encephalopathy Update: Phase IA. Prepared for USDA/FSIS. Boston, Harvard Center for Risk Analysis. October. (*http://www.fsis.usda.gov/Science/Risk_Assessments/index.asp*)

Comer, P.J., and P.J. Huntly. (2003). Exposure of the human population to BSE infectivity over the course of the BSE epidemic in

Great Britain and the impact of changes to the Over Thirty Month Rule. Over Thirty Month Rule (OTMR) review paper. June. (*http://www.food.gov.uk/multimedia/pdfs/otmcomer.pdf*)
Commission on Phytosanitary Measures (CPM). (2001). Glossary of Phytosanitary Terms, International Standards for Phytosanitary Measures No. 5.
Cooper, J.D., and S.M. Bird. (2003). Predicting incidence of variant Creutzfeldt-Jakob disease from UK dietary exposure to bovine spongiform encephalopathy for the 1940 to 1969 and post-1969 birth cohorts. International Journal of Epidemiology. Vol. 32 #5; 784–791.
Court of Auditors. (2001). Special Report No 12/2001. Official Journal of the European Communities 44: C 324–1–C 324/35.
De Bosschere, H., S. Roels, and E. Vanopdenbosch. (2004). Atypical case of bovine spongiform encephalopathy in an East-Flemish cow in Belgium. International Journal of Applied Research in Veterinary Medicine 2(1).
Department for Environment, Food and Rural Affairs (DEFRA), United Kingdom. (2005). Transmissible Spongiform Encephalopathies (TSEs) in Great Britain 2004—A Progress Report. (*http://www.defra.gov.uk/animalh/bse/publications/index.html*)
Department for Environment, Food and Rural Affairs (DEFRA), United Kingdom. (2006). BSE: Disease control & eradication—The feed ban—Born after the July 1988 ban (BAB) cases. As modified September 27, 2006. (*http://www.defra.gov.uk/animalh/bse/controls-eradication/feedban-bornafterban.html*)
Department for Environment, Food and Rural Affairs (DEFRA), United Kingdom. (2006a). BSE: Frequently Asked Questions. As modified October 3, 2006. (*http:/www.defra.gov.uk/animalh/bse/faq.html*)
Department for Environment, Food and Rural Affairs (DEFRA), United Kingdom. (2006b). Transmissible Spongiform Encephalopathies (TSEs) in Great Britain 2005—A Progress Report (*http://www.defra.gov.uk/animalh/bse/pdf/tse-gb_progressreport12–05.pdf*)
Department for Environment, Food and Rural Affairs (DEFRA), United Kingdom. (2007). Confirmed cases of BSE in GB by year of birth where known as of 1 March 2007. (*http://www.defra.gov.uk/animalh/bse/statistics/bse/yrbirth.html*) **Note:** This Web page lists cases in Great Britain, N. Ireland, and the total United Kingdom.
Department for Environment, Food and Rural Affairs (DEFRA), United Kingdom. (2007a). Cattle And Calves On Agricultural Holdings United Kingdom 1983–2005 (At June Survey). (*http://www.defra.gov.uk/esg/work_htm/publications/cs/farmstats_web/2_SURVEY_DATA_SEARCH/HISTORICAL_DATASETS/HISTORICAL_DATASETS/CATTLE/CATTLE_CALVES_83–2005_UK.XLS.*)
Department for Environment, Food and Rural Affairs (DEFRA), United Kingdom. (2007b). BSE: Disease Control and Eradication—Offspring and Cohort Culls. As modified May 24, 2007. (*http://www.defra.gov.uk/animalh/bse/controls-eradication/offspring.html*)
Espinosa, J.C., M. Morales, J. Castilla, M. Rogers, and J.M. Torres. (2007). Progression of prion infectivity in asymptomatic cattle after oral bovine spongiform encephalopathy challenge. Journal of General Virology 88:1379–1383. April.
European Commission (EC). (2003). Commission Working Document—With regard to the state of play on the prohibitions to feed animal protein to farmed animals to prevent transmissible spongiform encephalopathies. September. COM(2003)546. (*http://europa.eu.int/eur-lex/en/com/wdc/2003/com2003_0546en01.pdf*)
European Commission (EC). (2005). Report on the monitoring and testing of ruminants for the presence of transmissible spongiform encephalopathy (TSE) in the EU in 2004. June 2005. (*http://europa.eu.int/comm/food/food/biosafety/bse/annual_report_tse2004_en.pdf*)
European Commission (EC). (2005a). The TSE Roadmap. July 15. COM(2005) 322 FINAL. (*http://europa.eu.int/comm/food/food/biosafety/bse/roadmap_en.pdf*)
European Commission (EC). (2006). Report on the monitoring and testing of ruminants for the presence of Transmissible Spongiform Encephalopathy (TSE) in the EU in 2005.(*http://europa.eu.int/comm/food/food/biosafety/bse/annual_report_tse2005_en.pdf*)
European Commission Scientific Steering Committee (EC SSC). (2000). Report on the Assessment of the Geographical BSE-Risk (GBR) of France. July. (*http://ec.europa.eu/food/fs/sc/ssc/out119_en.pdf*)
European Commission Scientific Steering Committee (EC SSC). (2002). Opinion of the SSC on Design of a Field Trial for the Evaluation of New Rapid BSE Post Mortem Tests. February 22. (*http://ec.europa.eu/food/fs/sc/ssc/out246_en.pdf*)
European Commission Scientific Steering Committee (EC SSC). (2003). Opinion of the Scientific Steering Committee on the Field Trial Evaluation of Two New Rapid BSE Post Mortem Tests. March 6. (*http://ec.europa.eu/food/fs/sc/ssc/out316_en.pdf*)
Fleiss, J.L., B. Levin, M.C. Paik. (2003). Statistical Methods for Rates and Proportions, 3rd Ed. John Wiley & Sons: Hoboken, NJ.
Food Safety and Inspection Service (FSIS). (2004). FSIS Notice 50–04. Bovine Spongiform Encephalopathy (BSE): Issues Relating to Tonsils and Brain Collection. October 7. (*http://www.fsis.usda.gov/OPPDE/rdad/FSISNotices/50–04.pdf*)
Food Safety and Inspection Service (FSIS). (2007). FSIS Docket No. 03–025F. Affirmation of Interim Final Rules with Amendments. Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle; Prohibition of the Use of Certain Stunning Devices Used to Immobilize Cattle During Slaughter. July 13. (*http://www.fsis.usda.gov/Regulations_&_Policies/federal_register_publications_&_related_documents/index.asp*)
Fox, J., and H.H. Peterson. (2004). Risks and Implications of bovine spongiform encephalopathy for the United States: Insights from other countries. Food Policy 29 (2004): 45–60.
Giovannini, A., L. Savini, A. Conte, and G.L. Fiore. (2005). Comparison of BSE Prevalence Estimates from EU Countries for the Period July to December 2001 to the OIE and EU GBR Classifications. Journal of Veterinary Medicine, Series B 52: 262–271.
Heim, D., and U. Kihm. (2003). Risk management of transmissible spongiform encephalopathies in Europe. Rev. Sci. Tech. World Organization for Animal Health; 22(1): 179–199.
Heres, L., I. Elbers, B. Schreuder, and F. van Zijderveld. (2005). BSE in Nederland. Wageningen, CIDC-Lelystad. (*www.cidc-lelystad.wur.nl/NR/rdonlyres/C965BF6E–16C1–446A–B3D2–64DB72616494/11387/BSEinNederland.pdf*)
Hill, W. (2005). Review of the Evidence for the Occurrence of 'BARB' BSE Cases in Cattle. July 5. (*http://www.defra.gov.uk/animalh/bse/pdf/hillreport.pdf*)
Hoffman, C., U. Ziegler, A. Buschmann, A. Weber, L. Kupfer, A. Oelschlegel, B. Hammerschmidt, and M.H. Groschup. (2007). Prions spread via the autonomic nervous system from the gut to the central nervous system in cattle incubating bovine spongiform encephalopathy. J. Gen. Virology 88(3): 1048–1055. March.
Iwamaru, Y., Y. Okubo, T. Ikeda, H. Hayashi, M. Imamura, T. Yokoyama, and M. Shinagawa. (2005). PrPSc distribution of a natural case of bovine spongiform encephalopathy. Kitamoto T, ed. Prions: Food and Drug Safety. Springer-Verlag, New York.
Iwata, N., Y. Sato, Y. Higuchi, K. Nohtomi, N. Nagata, H. Hasegawa, M. Tobiume, Y. Nakamura, K. Hagiwara, H. Furuoka, M. Horiuchi, Y. Yamakawa, and T. Sata. (2006). Distribution of PrP^{Sc} in Cattle with Bovine Spongiform Encephalopathy Slaughtered at Abattoirs in Japan. Jpn. J. Infect. Dis. 59(2): 100–107. (*http://www.nih.go.jp/JJID/59/100.pdf*)
Kuchler, F., and A. Tegene. ''Did BSE Announcements Reduce Beef Purchases?'' USDA Economic Research Service, ERS Report Number 34, December 2006.
Lloyd, S.E., J.M. Linehan, M. Desbruslais, S. Joiner, J. Buckell, S. Brandner, J.D. Wadsworth, and J. Collinge. (2004). Characterization of two distinct prion strains derived from bovine spongiform encephalopathy transmissions to inbred mice. J. of Gen Virology 85(8):2471–2478.
Manuelidis, L., Z.-X. Yu, N. Banquero, and B. Mullins. (2007). Cells infected with scrapie and Creutzfeldt-Jakob disease agents produce intracellular 25-nm virus-like particles. Proc Natl Acad Sci. 104(6): 1965–70. February 6. (*http://www.pnas.org/cgi/reprint/104/6/1965*)
Mintert, J. ''Measuring Beef Demand.'' Kansas State University Agricultural Experiment Station and Cooperative Extension Service, Presentation to the Beef Board in Atlanta, Georgia, November 2006. (*http://www.agmanager.info/livestock/marketing/presentations/files/Mintert_Beef_Demand*)
Office of Management and Budget (OMB). (2004). ''Final Information Quality Bulletin for Peer Review.'' A Memorandum for

Heads of Departments and Agencies. M–05–03. The Office of Management and Budget, the Executive Office of the President, Washington, DC. December 16.
Research Triangle Institute (RTI). (2007). Peer Review of the Assessment of BSE Risk Associated with the Importation of Certain Additional Commodities from BSE Minimal Risk Regions (Canada). Final Report. March. (*http://www.aphis.usda.gov/peer_review/peer_review_agenda.shtml*)
Rice, J.A. (1988). Mathematical Statistics and Data Analysis. Pacific Grove, CA: Wadsworth & Brooks/Cole.
Saegerman, C., D. Berkvens, E. Vanopdenbosch, N. Speybroeck, P. Dechamps, M. Gouffaux, J. Penders, S. Roels, E. Thiry. (2004a). Epidemiology of Transmissible Spongiform Encephalopathies in Belgium and Europe. Transmissible Spongiform Encephalopathies: Creutzfeldt-Jakob Disease, Bovine Spongiform Encephalopathy and Scrapie. Veterinary and Agrochemical Research Centre (CODA/CERVA) Creutzfeldt-Jakob Commission of the Superior Council of Hygiene. November 27. Brussels, Belgium. (*http://www.var.fgov.be/pdf/1015_TSEDAY.pdf*)
Spongiform Encephalopathy Advisory Committee (SEAC). (2004). Updated approach to assessing the future number of vCJD cases arising from relaxation of the OTM scheme. pp. 2–3. July 2. (*http://www.seac.gov.uk/statements/OTM_statement_July04.pdf*)
Spongiform Encephalopathy Advisory Committee (SEAC). (2005). SEAC Annual Report 2005. (*http://www.seac.gov.uk/publicats/publicats.htm*)
Statistics Canada. (2007). Cattle inventories, by province. Tables by Province or Territory. (*http://www40.statcan.ca/z01/cs0003_e.htm*)
Stevenson, M.A., R.S. Morris, A.B. Lawson, J.W. Wilesmith, J.B. Ryan, and R. Jackson. (2005). Area-level risks for BSE in British cattle before and after the July 1988 meat and bone meal feed ban. Preventative Veterinary Medicine. 69(1–2): 129–44.
Taylor, D.M., S.L. Woodgate, and M. J. Atkinson. (1995). Inactivation of the bovine spongiform encephalopathy agent by rendering procedures. Vet. Rec. 137(24): 605–610.
Taylor, D.M., S.L. Woodgate, A.J. Fleetwood, and R.J.G. Cawthorne. (1997). The effect of rendering procedures on scrapie agent. Vet. Rec. 141(25): 643–649.
Terry, L.A., S. Marsh, S.J. Ryder, S.A.C. Hawkins, G.A.H. Wells, and Y.I. Spencer. (2003). Detection of disease specific PrP in the distal ileum of cattle exposed orally to the agent of bovine spongiform encephalopathy. Vet. Rec. 152(13): 387–392.
United States Department of Agriculture (USDA). (2005). Assessment of the Canadian Feed Ban. February. (*http://www.aphis.usda.gov/newsroom/hot_issues/bse/background*)
United States Department of Agriculture (USDA). (2006). BSE Trade Ban Status as of July 28, 2006. (*http://www.aphis.usda.gov/newsroom/hot_issues/bse/background*)
United States Department of Health and Human Services, Centers for Disease Control and Prevention (CDC). (2007). BSE (Bovine Spongiform Encephalopathy, or Mad Cow Disease). May 18. (*http://www.cdc.gov/ncidod/dvrd/bse/index.htm*)
Vickner, S., D. Bailey, and A. Dustin. (2006). ''University-Retail Industry Research Partnerships as a Means to Analyze Consumer Response: The Case of Mad Cow Disease.'' *Western Economics Forum* 5(2): 36–40.
Wells, G.A.H., M. Dawson, S.A.C. Hawkins, R.B. Green, I. Dexter, M.E. Francis, M.M. Simmons, A.R. Austin, and M.W. Horigan. (1994). Infectivity in the ileum of cattle challenged orally with bovine spongiform encephalopathy. Vet. Rec. 135(2): 40–41.
Wells, G.A.H., J. Spiropoulos, S.A.C. Hawkins, and S.J. Ryder. (2005). Pathogenesis of experimental bovine spongiform encephalopathy: pre-clinical infectivity in tonsil and observations on the distribution of lingual tonsil in slaughtered cattle. Vet Rec. 156(13): 401–407.
Wilesmith, J., R. Morris, M. Stevenson, R. Cannon, D. Prattley, and H. Benard. (2004). Development of a Method for Evaluation of National Surveillance Data and Optimization of National Surveillance Strategies for Bovine Spongiform Encephalopathy, A Project Conducted by the European Union TSE Community Reference Laboratory, Veterinary Laboratories Agency Weybridge, United Kingdom. (*http://www.bsurve.com*)
World Health Organization (WHO). (2002). (*www.who.int/mediacentre/factsheets/fs113/en*)
World Organization for Animal Health (OIE). (2006). Terrestrial Animal Health Code. Paris, OIE. (*http://www.oie.int/eng/normes/mcode/en_sommaire.htm*)
World Organization for Animal Health (OIE). (2006a). Terrestrial Animal Health Code Appendix 3.8.4, Articles 3.8.4.2 and 3.8.4.4. Surveillance for Bovine Spongiform Encephalopathy. OIE: Paris. (*http://www.oie.int/eng/normes/mcode/en_chapitre_3.8.4.htm*)
World Organization for Animal Health (OIE). (2006b). Terrestrial Animal Health Code Chapter 1.1.1. General Definitions. Article 1.1.1.1. OIE: Paris. (*http://www.oie.int/eng/normes/mcode/en_chapitre_1.1.1.htm*)
World Organization for Animal Health (OIE). (2007). Number of reported cases of bovine spongiform encephalopathy (BSE) in farmed cattle worldwide (excluding the United Kingdom). (*http://www.oie.int/eng/info/en_esbmonde.htm*)
World Organization for Animal Health (OIE). (2007a). Annual incidence rate of bovine spongiform encephalopathy (BSE) in OIE Member Countries that have reported cases, excluding the United Kingdom. (*http://www.oie.int/eng/info/en_esbincidence.htm*)
World Organization for Animal Health (OIE). (2007b). Official animal health status. Bovine spongiform encephalopathy. Resolution No. XXIV, Recognition of the Bovine Spongiform Encephalopathy Status of Member Countries. (*http://www.oie.int/eng/info/en_statesb.htm*)
Yamakawa, Y., K. Hagiwara, K. Nohtomi, Y. Nakamura, M. Nishijima, Y. Higuchi, Y. Sato, T. Sata, and the Expert Committee for BSE Diagnosis, Ministry of Health, Labour and Welfare of Japan. (2003). Atypical proteinase K-resistant prion protein (Pr^{Pres}) Observed in an apparently healthy 23-month-old Holstein steer. Japanese Journal of Infectious Disease 56:221–222.

List of Subjects

9 CFR Part 93

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

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 95

Animal feeds, Hay, Imports, Livestock, Reporting and recordkeeping requirements, Straw, Transportation.

9 CFR Part 96

Imports, Livestock, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR parts 93, 94, 95, and 96 as follows:

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

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

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

§ 93.405 [Amended]

■ 2. In § 93.405, paragraph (a)(4) is amended by removing the words ''feedlot or recognized slaughtering establishment'' and adding in their place the words ''destination''.

■ 3. Section 93.419 is amended as follows:

■ a. Paragraphs (b) and (c) are revised to read as set forth below.

■ b. Paragraph (d) is redesignated as paragraph (e).

■ c. A new paragraph (d) is added to read as set forth below.

■ d. In newly redesignated paragraph (e)(2), the reference to ''paragraph (d)(7)'' is removed and a reference to ''paragraph (e)(7)'' is added in its place.

§ 93.419 Sheep and goats from Canada.

* * * * *

(b) If the sheep or goats are unaccompanied by the certificate required by paragraph (a) of this section, or if they are found upon inspection at the port of entry to be affected with or exposed to a communicable disease, they shall be refused entry and shall be handled or quarantined, or otherwise disposed of, as the Administrator may direct.

(c) Any sheep or goats imported from Canada must not be pregnant, must be less than 12 months of age when imported into the United States and when slaughtered, must be from a flock or herd subject to a ruminant feed ban equivalent to the requirements established by the U.S. Food and Drug Administration at 21 CFR 589.2000, and must be individually identified by an official Canadian Food Inspection Agency eartag, applied before the animal's arrival at the port of entry into the United States, that is determined by the Administrator to meet standards equivalent to those for official eartags in the United States as defined in § 71.1 of this chapter and to be traceable to the premises of origin of the animal. No person may alter, deface, remove, or otherwise tamper with the individual identification while the animal is in the United States or moving into or through the United States, except that the identification may be removed at the time of slaughter. The animals must be accompanied by the certification issued in accordance with § 93.405 that states, in addition to the statements required by § 93.405, that the conditions of this paragraph have been met. Additionally, for sheep and goats imported for immediate slaughter, the certificate must state that the conditions of paragraphs (d)(1) through (d)(3) of this section have been met, and, for sheep and goats imported for other than immediate slaughter, the certificate must state that the conditions of paragraphs (e)(1) and (e)(2) of this section have been met.

(d) *Sheep and goats imported for immediate slaughter.* Sheep and goats imported from Canada for immediate slaughter must be imported only through a port of entry listed in § 93.403(b) or as provided for in § 93.403(f) in a means of conveyance sealed in Canada with seals of the Canadian Government, and must be moved directly as a group from the port of entry to a recognized slaughtering establishment for slaughter as a group. The sheep and goats shall be inspected at the port of entry and otherwise handled in accordance with § 93.408. The seals on the means of conveyance must be broken only at the port of entry by the APHIS port veterinarian or at the recognized slaughtering establishment by an authorized USDA representative. If the seals are broken by the APHIS port veterinarian at the port of entry, the means of conveyance must be resealed with seals of the U.S. Government before being moved to the recognized slaughtering establishment. The shipment must be accompanied from the port of entry to the recognized slaughtering establishment by APHIS Form VS 17–33, which must include the location of the recognized slaughtering establishment. Additionally, the sheep and goats must meet the following conditions:

(1) The animals have not tested positive for and are not suspect for a transmissible spongiform encephalopathy;

(2) The animals have not resided in a flock or herd that has been diagnosed with BSE; and

(3) The animals' movement is not restricted within Canada as a result of exposure to a transmissible spongiform encephalopathy.

* * * * *

■ 4. Section 93.420 is revised to read as follows:

§ 93.420 Ruminants from Canada for immediate slaughter other than bovines, sheep, and goats.

The requirements for the importation of sheep and goats from Canada for immediate slaughter are contained in § 93.419. The requirements for the importation of bovines from Canada for immediate slaughter are contained in § 93.436. All other ruminants imported from Canada for immediate slaughter, in addition to meeting all other applicable requirements of this part, must be imported only through a port of entry listed in § 93.403(b) or as provided for in § 93.403(f) to a recognized slaughtering establishment for slaughter, in conveyances that must be sealed with seals of the U.S. Government at the port of entry. The seals may be broken only at a recognized slaughtering establishment in the United States by an authorized USDA representative. The shipment must be accompanied from the port of entry to the recognized slaughtering establishment by APHIS Form VS 17–33, which must include the location of the recognized slaughtering establishment. Such ruminants shall be inspected at the port of entry and otherwise handled in accordance with § 93.408.

(Approved by the Office of Management and Budget under control number 0579–0277)

■ 5. Section 93.436 is amended as follows:

■ a. Paragraphs (a) and (b) are revised to read as set forth below.

■ b. In paragraph (c), the reference to "§§ 93.419(c) and 93.420" is removed and a reference to "§§ 93.405 and 93.419" is added in its place.

§ 93.436 Ruminants from regions of minimal risk for BSE.

* * * * *

(a) *Bovines for immediate slaughter.* Bovines from a region listed in § 94.18(a)(3) of this subchapter may be imported for immediate slaughter under the following conditions:

(1) The bovines must have been born on or after a date determined by APHIS to be the date of effective enforcement of a ruminant-to-ruminant feed ban in the region of export. For bovines imported from Canada, that date is March 1, 1999.

(2) Each bovine must be individually identified by an official eartag of the country of origin, applied before the animal's arrival at the port of entry into the United States, that is determined by the Administrator to meet standards equivalent to those for official eartags in this chapter and to be traceable to the premises of origin of the animal. No person may alter, deface, remove, or otherwise tamper with the official identification while the animal is in the United States or moving into or through the United States, except that the identification may be removed at the time of slaughter;

(3) The bovines must be accompanied by a certificate issued in accordance with § 93.405 that states, in addition to the statements required by § 93.405, that the conditions of paragraphs (a)(1) and (a)(2) of this section have been met;

(4) The bovines must be imported only through a port of entry listed in § 93.403(b) or as provided for in § 93.403(f). The bovines shall be inspected at the port of entry and otherwise handled in accordance with § 93.408;

(5) The bovines must be moved directly from the port of entry to a recognized slaughtering establishment. Bovines imported from Canada must be moved to the slaughtering establishment in conveyances that are sealed with seals of the U.S. Government at the port of entry. The seals may be broken only at the recognized slaughtering establishment by an authorized USDA representative; and

(6) The bovines must be accompanied from the port of entry to the recognized slaughtering establishment by APHIS Form VS 17–33.

(b) *Bovines for other than immediate slaughter.* Bovines from a region listed in § 94.18(a)(3) of this subchapter may be imported for other than immediate slaughter under the following conditions:

(1) The bovines must have been born on or after a date determined by APHIS to be the date of effective enforcement of a ruminant-to-ruminant feed ban in the region of export. For bovines imported from Canada, that date is March 1, 1999.

(2) The bovines must be permanently and humanely identified before arrival at the port of entry with a distinct and legible mark identifying the exporting country. Acceptable means of permanent identification include the following:

(i) A mark properly applied with a freeze brand, hot iron, or other method, and easily visible on the live animal and on the carcass before skinning. Such a mark must be not less than 2 inches nor more than 3 inches high, and must be applied to each animal's right hip, high on the tail-head (over the junction of the sacral and first cocygeal vertebrae). Bovines exported from Canada so marked must be marked with ''C^N'';

(ii) A tattoo with letters identifying the exporting country must be applied to the inside of one ear of the animal. For bovines exported from Canada, the tattoo must read ''CAN'';

(iii) Other means of permanent identification upon request if deemed adequate by the Administrator to humanely identify the animal in a distinct and legible way as having been imported from the BSE minimal-risk exporting region.

(3) Each bovine must be individually identified by an official eartag of the country of origin, applied before the animal's arrival at the port of entry into the United States, that is determined by the Administrator to meet standards equivalent to those for official eartags in § 71.1 of this chapter and to be traceable to the premises of origin of the animal. No person may alter, deface, remove, or otherwise tamper with the official identification while the animal is in the United States or moving into or through the United States, except that the identification may be removed at the time of slaughter;

(4) The bovines must be accompanied by a certificate issued in accordance with § 93.405 that states, in addition to the statements required by § 93.405, that the conditions of paragraphs (a)(1) and (a)(2) of this section have been met; and

(5) The bovines must be imported only through a port of entry listed in § 93.403(b) or as provided for in § 93.403(f).

* * * * *

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 6. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 94.19 [Amended]

■ 7. Section 94.19 is amended as follows:
■ a. By removing the words ''and small intestine'' each time they appear in paragraphs (a)(2), (b)(2), and (f).
■ b. By removing the Note to paragraph (a).
■ c. By removing the Note to paragraph (b).
■ d. By removing the Note to paragraph (f).

PART 95—SANITARY CONTROL OF ANIMAL BYPRODUCTS (EXCEPT CASINGS), AND HAY AND STRAW, OFFERED FOR ENTRY INTO THE UNITED STATES

■ 8. The authority citation for part 95 continues to read as follows:

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

■ 9. Section 95.4 is amended as follows:
■ a. The section heading and paragraph (a) introductory text are revised to read as set forth below.
■ b. Paragraphs (a)(1)(ii) and (a)(1)(iv) are revised to read as set forth below.
■ c. In paragraph (b), the words ''paragraphs (d) and (h)'' are removed and the words ''paragraphs (d), (e), and (i)'' are added in their place.
■ d. Paragraph (d) introductory text is revised to read as set forth below.
■ e. The ''Note to paragraph (f)'' and the ''Note to paragraph (g)'' are removed.
■ f. Paragraphs (e) through (h) are redesignated as paragraphs (f) through (i), respectively.
■ g. The ''Note'' currently following newly redesignated paragraph (f) is redesignated as ''Note to paragraph (f)''.
■ h. New paragraph (e) is added to read as set forth below.
■ i. In newly redesignated paragraph (h)(1)(i), the words ''and small intestine'' are removed.
■ j. In newly redesignated paragraph (i) introductory text, the words ''paragraphs (h)(1) through (h)(3)'' are removed and the words ''paragraphs (i)(1) through (i)(3)'' are added in their place, and the words ''paragraphs (h)(1) through (h)(4)'' are removed and the words ''paragraphs (i)(1) through (i)(4)'' are added in their place.
■ k. In newly redesignated paragraph (i)(4)(iii), the reference to ''paragraph (h)(2)'' is removed and a reference to ''paragraph (i)(1)'' is added in its place.

§ 95.4 Restrictions on the importation of processed animal protein, offal, tankage, fat, glands, certain tallow other than tallow derivatives, and blood and blood products due to bovine spongiform encephalopathy.

(a) Except as provided in paragraphs (c) through (i) of this section, the importation of the following is prohibited:

(1) * * *

(ii) Glands, unprocessed fat tissue, and blood and blood products derived from ruminants;

* * * * *

(iv) Derivatives of glands and blood and blood products derived from ruminants.

* * * * *

(d) Except as provided in paragraph (e) of this section, the importation of serum albumin, serocolostrum, amniotic liquids or extracts, and placental liquids derived from ruminants that have been in any region listed in § 94.18(a) of this chapter, and collagen and collagen products that meet any of the conditions listed in paragraphs (a)(1) through (a)(3) of this section, is prohibited unless the following conditions have been met:

* * * * *

(e) Bovine blood and blood products that are otherwise prohibited importation under paragraph (a)(1) or (d) of this section may be imported into the United States if they meet the following conditions:

(1) For blood collected at slaughter and for products derived from blood collected at slaughter:

(i) The blood was collected in a closed system in which the blood was conveyed directly from the animal in a closed conduit to a closed receptacle, or was collected otherwise in a hygienic manner that prevents contamination of the blood with SRMs.

(ii) The slaughtered animal passed ante-mortem inspection and was not subjected to a pithing process or to a stunning process with a device injecting compressed air or gas into the cranial cavity;

(2) For fetal bovine serum:

(i) The blood from which the fetal bovine serum was derived was collected in a closed system in which the blood was conveyed directly from the animal in a closed conduit to a closed receptacle, or was collected otherwise in a hygienic manner that prevents contamination of the blood with SRMs;

(ii) The dam of the fetal calf passed ante-mortem inspection and was not subjected to a pithing process or to a stunning process with a device injecting compressed air or gas into the cranial cavity;

(iii) The uterus was removed from the dam's abdominal cavity intact and taken to a separate area sufficiently removed from the slaughtering area of the facility to ensure that the fetal blood was not contaminated with SRMs when collected.

(3) For blood collected from live donor bovines and for products derived from blood collected from live donor bovines:

(i) The blood was collected in a closed system in which the blood was conveyed directly from the animal in a closed conduit to a closed receptacle, or was collected otherwise in a hygienic manner that prevents contamination of the blood with SRMs;

(ii) The donor animal was free of clinical signs of disease.

(4) Each shipment to the United States is accompanied by an original certificate signed by a full-time salaried veterinary officer of the national government of the region of origin, or issued by a veterinarian designated by or accredited by the national government of the region of origin, representing that the veterinarian issuing the certificate was authorized to do so. The certificate must state that the requirements of paragraph (e)(1), (e)(2), or (e)(3) of this section, as applicable, have been met.

* * * * *

PART 96—RESTRICTION OF IMPORTATIONS OF FOREIGN ANIMAL CASINGS OFFERED FOR ENTRY INTO THE UNITED STATES

■ 10. The authority citation for part 96 continues to read as follows:

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

■ 11. In § 96.1, definitions of *Food and Drug Administration* and *Food Safety and Inspection Service* are added, in alphabetical order, to read as follows:

§ 96.1 Definitions.

* * * * *

Food and Drug Administration. The Food and Drug Administration of the United States Department of Health and Human Services.

Food Safety and Inspection Service. The Food Safety and Inspection Service of the United States Department of Agriculture.

* * * * *

■ 12. In § 96.2, paragraph (b) is revised to read as follows:

§ 96.2 Prohibition of casings due to African swine fever and bovine spongiform encephalopathy.

* * * * *

(b) *Ruminant casings.* The importation of casings, except stomachs, from ruminants that originated in or were processed in any region listed in § 94.18(a) of this subchapter is prohibited, except as provided in paragraphs (b)(1) and (b)(2) of this section:

(1) Casings that are derived from sheep that were slaughtered in a region listed in § 94.18(a)(3) of this subchapter at less than 12 months of age and that were from a flock subject to a ruminant feed ban equivalent to the requirements established by the U.S. Food and Drug Administration at 21 CFR 589.2000 may be imported.

(2) Casings that are derived from bovines that were slaughtered in a region listed in § 94.18(a)(3) of this subchapter may be imported, provided, if the casings are derived from the small intestine, the casings are derived from that part of the small intestine that is eligible for use as human food in accordance with the requirements established by the Food Safety and Inspection Service at 9 CFR 310.22 and the Food and Drug Administration at 21 CFR 189.5.

(3) Casings imported in accordance with either paragraph (b)(1) or (b)(2) of this section must be accompanied by a certificate that:

(i) States that the casings meet the conditions of this section;

(ii) Is written in English;

(iii) Is signed by an individual eligible to issue the certificate required under § 96.3; and

(iv) Is presented to an authorized inspector at the port of entry.

* * * * *

■ 13. In § 96.3, paragraph (d) is revised to read as follows:

§ 96.3 Certificate for animal casings.

* * * * *

(d) In addition to meeting the requirements of this section, the certificate accompanying sheep casings from a region listed in § 94.18(a)(3) of this subchapter must state that the casings meet the requirements of § 96.2(b)(1), and the certificate accompanying bovine casings from a region listed in § 94.18(a)(3) of this subchapter must state that the casings meet the requirements of § 96.2(b)(2).

* * * * *

Done in Washington, DC, this 12th day of September 2007.

Charles D. Lambert,

Acting Under Secretary for Marketing and Regulatory Programs.

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Part IV

Department of Housing and Urban Development

Statutorily Mandated Designation of Difficult Development Areas for 2008; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5169–N–01]

Statutorily Mandated Designation of Difficult Development Areas for 2008

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: This document designates ''Difficult Development Areas'' (DDAs) for purposes of the Low-Income Housing Tax Credit (LIHTC) under Section 42 of the Internal Revenue Code of 1986 (the Code) (26 U.S.C. 42). The United States Department of Housing and Urban Development (HUD) makes new DDA designations annually. The designations of ''Qualified Census Tracts'' (QCTs) under Section 42 of the Internal Revenue Code published September 28, 2007, remain in effect.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions, contact Michael K. Hollar, Economist, Economic Development and Public Finance Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8234, Washington, DC 20410–6000, telephone number (202) 402–5878, or send an e-mail to *Michael.K.Hollar@hud.gov.* For specific legal questions pertaining to Section 42, contact Branch 5, Office of the Associate Chief Counsel, Passthroughs and Special Industries, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone number (202) 622–3040. For questions about the ''HUB Zones'' program, contact Michael P. McHale, Assistant Administrator for Procurement Policy, Office of Government Contracting, Small Business Administration, 409 Third Street, SW., Suite 8800, Washington, DC 20416, telephone number (202) 205–8885, fax number (202) 205–7167, or send an e-mail to *hubzone@sba.gov.* A text telephone is available for persons with hearing or speech impairments at (202) 708–9300. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUD User at (800) 245–2691 for a small fee to cover duplication and mailing costs.

Copies Available Electronically: This notice and additional information about DDAs and QCTs are available electronically on the Internet at *http://www.huduser.org/datasets/qct.html.*

SUPPLEMENTARY INFORMATION:

This Document

This notice designates DDAs for each of the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. The designations of DDAs in this notice are based on final Fiscal Year (FY) 2007 Fair Market Rents (FMRs), FY2007 income limits, and 2000 Census population counts, as explained below. This notice also lists those areas treated as DDAs under the Gulf Opportunity Zone Act of 2005 (GO Zone Act) (Pub. L. 109–135; the GO Zone Act, as amended by the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007). Specifically, the GO Zone Act provides that areas ''determined by the President to warrant individual or individual and public assistance from the federal government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act)'' as a result of Hurricanes Katrina, Rita, or Wilma shall be treated as DDAs designated under subclause (I) of Internal Revenue Code section 42(d)(5)(C)(iii) (i.e., areas designated by the Secretary of Housing and Urban Development as having high construction, land, and utility costs relative to area median gross income (AMGI)), and shall not be taken into account for purposes of applying the limitation under subclause II of such section (i.e., the 20 percent cap on the total population of designated areas). The designations of QCTs under Section 42 of the Internal Revenue Code published September 28, 2006 (71 FR 57234) remain in effect.

2000 Census

Data from the 2000 Census on total population of metropolitan areas and nonmetropolitan areas are used in the designation of DDAs. The Office of Management and Budget (OMB) published new metropolitan area definitions incorporating 2000 Census data first in OMB Bulletin No. 03–04 on June 6, 2003, and has updated them periodically through OMB Bulletin No. 06–01 on December 5, 2005. The FY2007 FMRs and FY2007 income limits used to designate DDAs are based on these new MSA definitions, with modifications to account for substantial differences in rental housing markets (and, in some cases, median income levels) within MSAs.

Background

The U.S. Department of the Treasury (Treasury) and its Internal Revenue Service (IRS) are authorized to interpret and enforce the provisions of the Internal Revenue Code (the Code), including the LIHTC found at Section 42 of the Code. The Secretary of HUD is required to designate DDAs and QCTs by Section 42(d)(5)(C) of the Code. In order to assist in understanding HUD's mandated designation of DDAs and QCTs for use in administering Section 42, a summary of the section is provided. The following summary does not purport to bind Treasury or the IRS in any way, nor does it purport to bind HUD, since HUD has authority to interpret or administer the Code only in instances where it receives explicit delegation.

Summary of Low-Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low-income housing. Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (credit ceiling) is limited by population. Each state is allowed a credit ceiling based on a statutory formula indicated at Section 42(h)(3). States may carry forward unallocated credits derived from the credit ceiling for one year; however, to the extent these unallocated credits are not used by then, the credits go into a national pool to be redistributed to states as additional credit. State and local housing agencies allocate the state's credit ceiling among low-income housing buildings whose owners have applied for the credit. Besides Section 42 credits derived from the credit ceiling, states may also provide Section 42 credits to owners of buildings based on the percentage of certain building costs financed by tax-exempt bond proceeds. Credits provided under the tax-exempt bond ''volume cap'' do not reduce the credits available from the credit ceiling.

The credits allocated to a building are based on the cost of units placed in service as low-income units under particular minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC: either 20 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the Area Median Gross Income (AMGI), or 40 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. The term ''rent-restricted'' means that gross rent, including an allowance for utilities, cannot exceed 30 percent of the tenant's imputed income limitation (i.e., 50 percent or 60 percent of AMGI). The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low-income character of the building for at least an additional 15 years.

The LIHTC reduces income tax liability dollar-for-dollar. It is taken annually for a term of 10 years and is intended to yield a present value of either: (1) 70 percent of the ''qualified basis'' for new construction or substantial rehabilitation expenditures that are not federally subsidized (i.e., financed with tax-exempt bonds or below-market federal loans), or (2) 30 percent of the qualified basis for the cost of acquiring certain existing buildings or projects that are federally subsidized. The actual credit rates are adjusted monthly for projects placed in service after 1987 under procedures specified in Section 42. Individuals can use the credits up to a deduction equivalent of $25,000 (the actual maximum amount of credit that an individual can claim depends on the individual's marginal tax rate). Individuals cannot use the credits against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credits against ordinary income tax. They cannot use the credits against the alternative minimum tax. These corporations can also deduct losses from the project.

The qualified basis represents the product of the building's ''applicable fraction'' and its ''eligible basis.'' The applicable fraction is based on the number of low-income units in the building as a percentage of the total number of units, or based on the floor space of low income-units as a percentage of the total floor space of residential units in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to a capital account that are incurred prior to the end of the first taxable year in which the qualified low-income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated DDAs or designated QCTs, eligible basis can be increased up to 130 percent from what it would otherwise be. This means that the available credits also can be increased by up to 30 percent. For example, if a 70 percent credit is available, it effectively could be increased to as much as 91 percent.

Section 42 of the Code defines a DDA as any area designated by the Secretary of HUD as an area that has high construction, land, and utility costs relative to the AMGI. All designated DDAs in metropolitan areas (taken together) may not contain more than 20 percent of the aggregate population of all metropolitan areas, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all nonmetropolitan areas.

The GO Zone Act provides that areas ''determined by the President to warrant individual or individual and public assistance from the Federal Government'' under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma shall be treated as DDAs designated under subclause I of Internal Revenue Code section 42(d)(5)(C)(iii) (i.e., areas designated by the Secretary of HUD as having high construction, land, and utility costs relative to AMGI), and shall not be taken into account for purposes of applying the limitation under subclause II of such section (i.e., the 20 percent cap on the total population of designated areas). This notice lists the affected areas described in the GO Zone Act. Because the populations of DDAs designated under the GO Zone Act are not counted against the statutory 20 percent cap on the aggregate population of DDAs, the total population of designated metropolitan DDAs listed in this notice exceeds 20 percent of the total population of all MSAs, and the population of all nonmetropolitan DDAs listed in this notice exceeds 20 percent of the total population of nonmetropolitan counties.

Explanation of HUD Designation Methodology

A. Difficult Development Areas

This notice lists all areas ''determined by the President to warrant individual or individual and public assistance from the Federal Government'' under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma as DDAs according to lists of counties and parishes from the Federal Emergency Management Agency Web site (*http://www.fema.gov/*). Affected metropolitan areas and nonmetropolitan areas are assigned the indicator ''[GO Zone]'' in the lists of DDAs.

In developing the list of the remaining DDAs, HUD compared housing costs with incomes. HUD used 2000 Census population data and the MSA definitions, as published in OMB Bulletin No. 06–01 on December 5, 2005, with modifications, as described below. In keeping with past practice of basing the coming year's DDA designations on data from the preceding year, the basis for these comparisons is the FY2007 HUD income limits for very low-income households (Very Low Income Limits, or VLILs), which are based on 50 percent of AMGI, and final FY2007 FMRs used for the Housing Choice Voucher (HCV) program. In formulating the FY2007 FMRs and VLILs, HUD modified the current OMB definitions of MSAs to account for substantial differences in rents among areas within each new MSA that were in different FMR areas under definitions used in prior years. HUD formed these ''HUD Metro FMR Areas'' (HMFAs) in cases where one or more of the parts of newly defined MSAs that previously were in separate FMR areas had 2000 Census base 40th-percentile recent mover rents that differed, by 5 percent or more, from the same statistic calculated at the MSA level. In addition, a few HMFAs were formed on the basis of very large differences in AMGIs among the MSA parts. All HMFAs are contained entirely within MSAs. All nonmetropolitan counties are outside of MSAs and are not broken up by HUD for purposes of setting FMRs and VLILs. (Complete details on HUD's process for determining FY2007 FMR areas and FMRs are available at *http://www.huduser.org/datasets/fmr/fmrs/index.asp?data=fmr07.* Complete details on HUD's process for determining FY2007 Income Limits are available at *http://www.huduser.org/datasets/il/il2007_docsys.html.*)

HUD's unit of analysis for designating metropolitan DDAs, therefore, consists of: entire MSAs, in cases where these were not broken up into HMFAs for purposes of computing FMRs and VLILs; and HMFAs within the MSAs that were broken up for such purposes. Hereafter in this notice, the unit of analysis for designating metropolitan DDAs will be called the HMFA, and the unit of analysis for nonmetropolitan DDAs will be the nonmetropolitan county or county equivalent area. The procedure used in making the DDA calculations follows:

1. For each HMFA and each nonmetropolitan county, a ratio was calculated. This calculation used the final FY2007 two-bedroom FMR and the FY2007 four-person VLIL.

a. The numerator of the ratio was the area's final FY2007 FMR. In general, the FMR is based on the 40th-percentile gross rent paid by recent movers to live in a two-bedroom apartment. In metropolitan areas granted an FMR based on the 50th-percentile rent for purposes of improving the administration of HUD's HCV program (see 71 FR 5068), the 40th-percentile rent was used to ensure nationwide consistency of comparisons.

b. The denominator of the ratio was the monthly LIHTC income-based rent limit, which was calculated as 1⁄12 of 30 percent of 120 percent of the area's VLIL (where the VLIL was rounded to the nearest $50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent of AMGI base).

2. The ratios of the FMR to the LIHTC income-based rent limit were arrayed in descending order, separately, for HMFAs and for nonmetropolitan counties.

3. The non-GO Zone DDAs are those HMFAs and nonmetropolitan counties not in areas ''determined by the President to warrant individual or individual and public assistance from the Federal Government'' under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma, with the highest ratios cumulative to 20 percent of the 2000 population of all HMFAs and of all nonmetropolitan counties, respectively.

B. Application of Population Caps to DDA Determinations

In identifying DDAs, HUD applied caps, or limitations, as noted above. The cumulative population of metropolitan DDAs not in areas ''determined by the President to warrant individual or individual and public assistance from the Federal Government'' under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma cannot exceed 20 percent of the cumulative population of all metropolitan areas. The cumulative population of nonmetropolitan DDAs not in areas ''determined by the President to warrant individual or individual and public assistance from the Federal Government'' under the Stafford Act by reason of Katrina, Rita, or Wilma cannot exceed 20 percent of the cumulative population of all nonmetropolitan areas.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains the procedures. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio, as described above, was identical (to four decimal places) to the last area selected, *and* its inclusion resulted in only a minor overrun of the cap. Thus, for both the designated metropolitan and nonmetropolitan DDAs, there may be minimal overruns of the cap. HUD believes the designation of additional areas in the above examples of minimal overruns is consistent with the intent of the legislation. As long as the apparent excess is small due to measurement errors, some latitude is justifiable because it is impossible to determine whether the 20 percent cap has been exceeded. Despite the care and effort involved in a decennial census, the Census Bureau and all users of the data recognize that the population counts for a given area and for the entire country are not precise. Therefore, the extent of the measurement error is unknown. There can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting small variances above the 20 percent limit.

C. Exceptions to OMB Definitions of MSAs and Other Geographic Matters

As stated in OMB Bulletin 06–01 defining metropolitan areas:

> OMB establishes and maintains the definitions of Metropolitan * * * Statistical Areas, * * * solely for statistical purposes. * * * OMB does not take into account or attempt to anticipate any non-statistical uses that may be made of the definitions[.] In cases where * * * an agency elects to use the Metropolitan * * * Area definitions in nonstatistical programs, it is the sponsoring agency's responsibility to ensure that the definitions are appropriate for such use. An agency using the statistical definitions in a nonstatistical program may modify the definitions, but only for the purposes of that program. In such cases, any modifications should be clearly identified as deviations from the OMB statistical area definitions in order to avoid confusion with OMB's official definitions of Metropolitan * * * Statistical Areas.''

Following OMB guidance, the estimation procedure for the FY2007 FMRs incorporates the current OMB definitions of metropolitan areas based on the new Core-Based Statistical Area (CBSA) standards, as implemented with 2000 Census data, but makes adjustments to the definitions, in order to separate subparts of these areas in cases where FMRs (and in a few cases, VLILs) would otherwise change significantly if the new area definitions were used without modification. In CBSAs where sub-areas are established, it is HUD's view that the geographic extent of the housing markets are not yet the same as the geographic extent of the CBSAs, but may become so as the social and economic integration of the CBSA component areas increases.

The geographic baseline for the new estimation procedure is the CBSA Metropolitan Areas (referred to as Metropolitan Statistical Areas or MSAs) and CBSA Non-Metropolitan Counties (non-metropolitan counties include the county components of Micropolitan CBSAs where the counties are generally assigned separate FMRs). The HUD-modified CBSA definitions allow for sub-area FMRs within MSAs based on the boundaries of ''Old FMR Areas'' (OFAs) within the boundaries of new MSAs. (OFAs are the FMR areas defined for the FY2005 FMRs. Collectively, they include June 30, 1999, OMB-definition Metropolitan Statistical Areas and Primary Metropolitan Statistical Areas (old definition MSAs/PMSAs), metropolitan counties deleted from old definition MSAs/PMSAs by HUD for FMR-setting purposes, and counties and county parts outside of old definition MSAs/PMSAs referred to as non-metropolitan counties.) Sub-areas of MSAs are assigned their own FMRs when the sub-area 2000 Census Base FMR differs significantly from the MSA 2000 Census Base FMR (or, in some cases, where the 2000 Census base AMGI differs significantly from the MSA 2000 Census Base AMGI). MSA sub-areas, and the remaining portions of MSAs after sub-areas have been determined, are referred to as ''HUD Metro FMR Areas (HMFAs),'' to distinguish such areas from OMB's official definition of MSAs.

In addition, Waller County, Texas, which is part of the Houston-Baytown-Sugar Land, TX HMFA, is not an area ''determined by the President to warrant individual or individual and public assistance from the Federal Government'' under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma. It is, therefore, excluded from the definition of the Houston-Baytown-Sugar Land, TX HMFA and is assigned the FMR and VLIL of the Houston-Baytown-Sugar Land, TX HMFA and is evaluated as if it were a separate metropolitan area for purposes of designating DDAs. The Houston-Baytown-Sugar Land, TX HMFA is assigned the indicator ''(part)'' in the list of Metropolitan DDAs.

In the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), HMFAs are defined according to county subdivisions or minor civil divisions (MCDs), rather than county boundaries. However, since no part of an HMFA is outside an OMB-defined, county-based MSA, all New England nonmetropolitan counties are kept intact for purposes of designating Nonmetropolitan DDAs.

For the convenience of readers of this notice, the geographical definitions of designated Metropolitan DDAs are included in the list of DDAs.

The Census Bureau provides no tabulations of 2000 Census data for Broomfield County, Colorado, an area that was created from parts of four Colorado counties when the city of Broomfield became a county in November 2001. Broomfield County is made up of former parts of Adams, Boulder, Jefferson, and Weld counties. The boundaries of Broomfield County are similar, but not identical to, the boundaries of the city of Broomfield at the time of the 2000 Census. In OMB metropolitan area definitions and, therefore, for purposes of this notice, Broomfield County is included as part of the Denver-Aurora, CO MSA. Census tracts in Broomfield County include the parts of the Adams, Boulder, Jefferson, and Weld County census tracts that were within the boundaries of the city of Broomfield according to the 2000 Census, plus parts of three Adams County tracts (85.15, 85.16, and 85.28), and one Jefferson County tract (98.25) that were not within any municipality during the 2000 Census but which, according to Census Bureau maps, are within the boundaries of Broomfield County. Data for Adams, Boulder, Jefferson, and Weld Counties and their census tracts were adjusted to exclude the data assigned to Broomfield County and its census tracts.

Future Designations

DDAs are designated annually as updated income and FMR data are made public.

Effective Date

For DDAs designated by reason of being in areas ''determined by the President to warrant individual or individual and public assistance from the Federal Government'' under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma (the GO Zone Designation), the designation is effective:

(1) For housing credit dollar amounts allocated and buildings placed in service during the period beginning on January 1, 2006, and ending on December 31, 2010; or

(2) For purposes of Section 42(h)(4) of the Internal Revenue Code, for buildings placed in service during the period beginning on January 1, 2006, and ending on December 31, 2010, but only with respect to bonds issued after December 31, 2005.

The 2008 lists of DDAs that are not part of the GO Zone Designation are effective:

(1) For allocations of credit after December 31, 2007; or

(2) For purposes of Section 42(h)(4) of the Code, if the bonds are issued and the building is placed in service after December 31, 2007.

If an area is not on a subsequent list of DDAs, the 2008 lists are effective for the area if:

(1) The allocation of credit to an applicant is made no later than the end of the 365-day period after the submission to the LIHTC-allocating agency of a complete application by the applicant, and the submission is made before the effective date of the subsequent lists; or

(2) For purposes of Section 42(h)(4) of the Code, if:

(a) The bonds are issued or the building is placed in service no later than the end of the 365-day period after the applicant submits a complete application to the bond-issuing agency, and

(b) The submission is made before the effective date of the subsequent lists, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted.

An application is deemed to be submitted on the date it is filed if the application is determined to be complete by the credit-allocating or bond-issuing agency. A ''complete application'' means that no more than *de minimis* clarification of the application is required for the agency to make a decision about the allocation of tax credits or issuance of bonds requested in the application.

In the case of a ''multiphase project,'' the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the project received its first allocation of LIHTC. For purposes of Section 42(h)(4) of the Internal Revenue Code, the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the first of the following occurred: (a) The building(s) in the first phase were placed in service or (b) the bonds were issued.

For purposes of this notice, a ''multiphase project'' is defined as a set of buildings to be constructed or rehabilitated under the rules of the LIHTC and meeting the following criteria:

(1) The multiphase composition of the project (i.e., total number of buildings and phases in project, with a description of how many buildings are to be built in each phase and when each phase is to be completed, and any other information required by the agency) is made known by the applicant in the first application of credit for any building in the project, and that applicant identifies the buildings in the project for which credit is (or will be) sought;

(2) The aggregate amount of LIHTC applied for on behalf of, or that would eventually be allocated to, the buildings on the site exceeds the one-year limitation on credits per applicant, as defined in the QAP of the LIHTC-allocating agency, or the annual per capita credit authority of the LIHTC allocating agency, and is the reason the applicant must request multiple allocations over 2 or more years; and

(3) All applications for LIHTC for buildings on the site are made in immediately consecutive years.

Members of the public are hereby reminded that the Secretary of Housing and Urban Development, or the Secretary's designee, has sole legal authority to designate DDAs and QCTs by publishing lists of geographic entities as defined by, in the case of DDAs, the several states and the governments of the insular areas of the United States and, in the case of QCTs, by the Census Bureau; and to establish the effective dates of such lists. The Secretary of the Treasury, through the IRS thereof, has sole legal authority to interpret, and to determine and enforce compliance with, the Internal Revenue Code and associated regulations, including **Federal Register** notices published by HUD for purposes of designating DDAs and QCTs. Representations made by any other entity as to the content of HUD notices designating DDAs and QCTs that do not precisely match the language published by HUD should not be relied upon by taxpayers in determining what actions are necessary to comply with HUD notices.

Interpretive Examples of Effective Date

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose DDA status. The term ''regular DDA,'' as used below, refers to DDAs that are designated by the Secretary of HUD as having high construction, land, and utility costs relative to AMGI. The term ''GO Zone DDA'' refers to areas ''determined by the President to warrant individual or individual and public assistance from the Federal Government'' under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma. The examples covering regular DDAs are equally applicable to QCT designations.

(Case A) Project A is located in a 2008 regular DDA that is NOT a designated regular DDA in 2009. A complete application for tax credits for Project A is filed with the allocating agency on November 15, 2008. Credits are allocated to Project A on October 30, 2009. Project A is eligible for the increase in basis accorded a project in a 2008 regular DDA because the application was filed BEFORE January 1, 2009 (the assumed effective date for the 2009 regular DDA lists), and because tax credits were allocated no later than the end of the 365-day period after the filing of the complete application for an allocation of tax credits.

(Case B) Project B is located in a 2008 regular DDA that is NOT a designated regular DDA in 2009. A complete application for tax credits for Project B is filed with the allocating agency on December 1, 2008. Credits are allocated to Project B on March 30, 2010. Project B is NOT eligible for the increase in basis accorded a project in a 2008 regular DDA because, although the application for an allocation of tax credits was filed BEFORE January 1, 2009 (the assumed effective date of the 2009 regular DDA lists), the tax credits were allocated later than the end of the 365-day period after the filing of the complete application.

(Case C) Project C is located in a 2008 regular DDA that was not a DDA in 2007. Project C was placed in service on November 15, 2007. A complete application for tax-exempt bond financing for Project C is filed with the bond-issuing agency on January 15, 2008. The bonds that will support the permanent financing of Project C are issued on September 30, 2008. Project C is NOT eligible for the increase in basis otherwise accorded a project in a 2008 DDA because the project was placed in service BEFORE January 1, 2008.

(Case D) Project D is located in an area that is a regular DDA in 2008, but is NOT a regular DDA in 2009. A complete application for tax-exempt bond financing for Project D is filed with the bond-issuing agency on October 30, 2008. Bonds are issued for Project D on April 30, 2009, but Project D is not placed in service until January 30, 2010. Project D is eligible for the increase in basis available to projects located in 2008 regular DDAs because: (1) The first of the two events necessary for triggering the effective date for buildings described in Section 42(h)(4)(B) of the Code (the two events being bonds issued and buildings placed in service) took place on April 30, 2009, within the 365-day period after a complete application for tax-exempt bond financing was filed, (2) the application was filed during a time when the location of Project D was in a regular DDA, and (3) both the issuance of the bonds and placement in service of project D occurred after the application was submitted.

(Case E) Project E is located in a GO Zone DDA. The bonds used to finance project E are issued on July 1, 2010, and project E is placed in service July 1, 2011. Project E is NOT eligible for the increase in basis available to projects in GO Zone DDAs because it was not placed in service during the period that began on January 1, 2006, and ends on December 31, 2010.

(Case F) Project F is located in a GO Zone DDA. The bonds used to finance project F were issued July 1, 2005, and project F is placed in service on July 1, 2008. Project F is NOT eligible for the increase in basis available to projects in GO Zone DDAs because the bonds used to finance project F were issued BEFORE December 31, 2005.

(Case G) Project G is a multiphase project located in a 2007 regular DDA that is NOT a designated regular DDA in 2008. The first phase of Project G received an allocation of credits in 2007, pursuant to an application filed March 15, 2007, which describes the multiphase composition of the project. An application for tax credits for the second phase Project G is filed with the allocating agency by the same entity on March 15, 2008. The second phase of Project G is located on a contiguous site. Credits are allocated to the second phase of Project G on October 30, 2008. The aggregate amount of credits allocated to the two phases of Project G exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP and is the reason that applications were made in multiple phases. The second phase of Project G is therefore eligible for the increase in basis accorded a project in a 2007 regular DDA because it meets all of the conditions to be a part of a multiphase project.

(Case H) Project H is a multiphase project located in a 2007 regular DDA that is NOT a designated regular DDA in 2008. The first phase of Project H received an allocation of credits in 2007, pursuant to an application filed March 15, 2007, which does not describe the multiphase composition of the project. An application for tax credits for the second phase Project H is filed with the allocating agency by the same entity on March 15, 2009. Credits are allocated to the second phase of Project H on October 30, 2009. The aggregate amount of credits allocated to the two phases of Project H exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP. The second phase of Project H is, therefore, NOT eligible for the increase in basis accorded a project in a 2007 regular DDA because it does not meet all of the conditions for a multiphase project, as defined in this notice. The original application for credits for the first phase did not describe the multiphase composition of the project. Also, the application for credits for the second phase of Project H was not made in the year immediately following the first phase application year.

Findings and Certifications

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(6) of HUD's regulations, the policies and procedures contained in this notice provide for the establishment of fiscal requirements or procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act, except for extraordinary circumstances, and no Finding of No Significant Impact is required.

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any policy document that has federalism implications if the document either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the document preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This notice merely designates DDAs as required under Section 42 of the Internal Revenue Code, as amended, for the use by political subdivisions of the states in allocating the LIHTC. This notice also details the technical methodology used in making such designations. As a result, this notice is not subject to review under the order.

Dated: August 31, 2007.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

BILLING CODE 4210–67–P

2008 IRS SECTION 42(d)(5)(C) METROPOLITAN DIFFICULT DEVELOPMENT AREAS
(OMB Metropolitan Area Definitions, December 5, 2005 [MSA] and derived FY2007 HUD Metro FMR Area Definitions [HMFA])

State	Metropolitan Area	Metropolitan Area Components			
Alabama	Mobile, AL MSA [GO Zone]	Mobile County			
	Tuscaloosa, AL MSA [GO Zone]	Greene County	Hale County	Tuscaloosa County	
Arizona	Flagstaff, AZ MSA	Coconino County			
	Prescott, AZ MSA	Yavapai County			
	Yuma, AZ MSA	Yuma County			
California	Los Angeles-Long Beach, CA HMFA	Los Angeles County			
	Napa, CA MSA	Napa County			
	Oakland-Fremont, CA HMFA	Alameda County	Contra Costa County		
	Orange County, CA HMFA	Orange County			
	Oxnard-Thousand Oaks-Ventura, CA MSA	Ventura County			
	Sacramento--Arden-Arcade--Roseville, CA HMFA	El Dorado County	Placer County	Sacramento County	
	Salinas, CA MSA	Monterey County			
	San Diego-Carlsbad-San Marcos, CA MSA	San Diego County			
	San Luis Obispo-Paso Robles, CA MSA	San Luis Obispo County			
	Santa Barbara-Santa Maria, CA MSA	Santa Barbara County			
	Santa Cruz-Watsonville, CA MSA	Santa Cruz County			
	Santa Rosa-Petaluma, CA MSA	Sonoma County			
	Stockton, CA MSA	San Joaquin County			
Florida	Cape Coral-Fort Myers, FL MSA [GO Zone]	Lee County			
	Deltona-Daytona Beach-Ormond Beach, FL MSA	Volusia County			
	Fort Lauderdale, FL HMFA [GO Zone]	Broward County			
	Miami-Miami Beach-Kendall, FL HMFA [GO Zone]	Miami-Dade County			
	Naples-Marco Island, FL MSA [GO Zone]	Collier County			
	Palm Bay-Melbourne-Titusville, FL MSA [GO Zone]	Brevard County			
	Port St. Lucie-Fort Pierce, FL MSA [GO Zone]	Martin County	St. Lucie County		
	Sebastian-Vero Beach, FL MSA [GO Zone]	Indian River County			
	Tampa-St. Petersburg-Clearwater, FL MSA	Hernando County	Hillsborough County	Pasco County	Pinellas County
	West Palm Beach-Boca Raton, FL HMFA [GO Zone]	Palm Beach County			
Hawaii	Honolulu, HI MSA	Honolulu County			
Louisiana	Baton Rouge, LA HMFA [GO Zone]	Ascension Parish	East Baton Rouge Parish	East Feliciana Parish	Livingston Parish
		Pointe Coupee Parish	St. Helena Parish	West Baton Rouge Parish	West Feliciana Parish
	Houma-Bayou Cane-Thibodaux, LA MSA [GO Zone]	Lafourche Parish	Terrebonne Parish		
	Iberville Parish, LA HMFA [GO Zone]	Iberville Parish			
	Lafayette, LA MSA [GO Zone]	Lafayette Parish	St. Martin Parish		
	Lake Charles, LA MSA [GO Zone]	Calcasieu Parish	Cameron Parish		
	New Orleans-Metairie-Kenner, LA MSA [GO Zone]	Jefferson Parish	Orleans Parish	Plaquemines Parish	St. Bernard Parish
		St. Charles Parish	St. John the Baptist Parish	St. Tammany Parish	

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2008 IRS SECTION 42(d)(5)(C) METROPOLITAN DIFFICULT DEVELOPMENT AREAS
(OMB Metropolitan Area Definitions, December 5, 2005 [MSA] and derived FY2007 HUD Metro FMR Area Definitions [HMFA])

State	Metropolitan Area	Metropolitan Area Components			
Massachusetts	**Boston-Cambridge-Quincy, MA-NH HMFA**	Acton town	Amesbury town	Arlington town	Ashby town
		Ashland town	Ayer town	Bedford town	Bellingham town
		Belmont town	Beverly city	Boston city	Boxborough town
		Braintree town	Brookline town	Burlington town	Cambridge city
		Canton town	Carlisle town	Carver town	Chelsea city
		Cohasset town	Concord town	Danvers town	Dedham town
		Dover town	Duxbury town	Essex town	Everett city
		Foxborough town	Framingham town	Franklin city	Gloucester city
		Hamilton town	Hanover town	Hingham town	Holbrook town
		Holliston town	Hopkinton town	Hudson town	Hull town
		Ipswich town	Kingston town	Lexington town	Lincoln town
		Littleton town	Lynn city	Lynnfield town	Malden city
		Manchester-by-the-Sea town	Marblehead town	Marlborough city	Marshfield town
		Maynard town	Medfield town	Medford city	Medway town
		Melrose city	Middleton town	Millis town	Milton town
		Nahant town	Natick town	Needham town	Newbury town
		Newburyport city	Newton city	Norfolk town	North Reading town
		Norwell town	Norwood town	Peabody city	Pembroke town
		Plainville town	Plymouth town	Quincy city	Randolph town
		Reading town	Revere city	Rockland town	Rockport town
		Rowley town	Salem city	Salisbury town	Saugus town
		Scituate town	Sharon town	Sherborn town	Shirley town
		Somerville city	Stoneham town	Stoughton town	Stow town
		Sudbury town	Swampscott town	Topsfield town	Townsend town
		Wakefield town	Walpole town	Waltham city	Wareham town
		Watertown city	Wayland town	Wellesley town	Wenham town
		Weston town	Westwood town	Weymouth town	Wilmington town
		Winchester town	Winthrop town	Woburn city	Wrentham town
	Brockton, MA HMFA	Abington town	Avon town	Bridgewater town	Brockton city
		East Bridgewater town	Halifax town	Hanson town	Lakeville town
		Marion town	Mattapoisett town	Middleborough town	Plympton town
		Rochester town	West Bridgewater town	Whitman town	
Mississippi	**Gulfport-Biloxi, MS MSA [GO Zone]**	Hancock County	Harrison County	Stone County	
	Hattiesburg, MS MSA [GO Zone]	Forrest County	Lamar County	Perry County	
	Jackson, MS HMFA [GO Zone]	Copiah County	Hinds County	Madison County	Rankin County
	Pascagoula, MS MSA [GO Zone]	George County	Jackson County		
	Simpson County, MS HMFA [GO Zone]	Simpson County			
New Hampshire	**Boston-Cambridge-Quincy, MA-NH HMFA**	Seabrook town	South Hampton town		
New Jersey	**Atlantic City, NJ MSA**	Atlantic County			
	Jersey City, NJ HMFA	Hudson County			
	Vineland-Millville-Bridgeton, NJ MSA	Cumberland County			
New York	**Nassau-Suffolk, NY HMFA**	Nassau County	Suffolk County		
	New York, NY HMFA	Bronx County	Kings County	New York County	Putnam County
		Queens County	Richmond County	Rockland County	Westchester County

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2008 IRS SECTION 42(d)(5)(C) METROPOLITAN DIFFICULT DEVELOPMENT AREAS
(OMB Metropolitan Area Definitions, December 5, 2005 [MSA] and derived FY2007 HUD Metro FMR Area Definitions [HMFA])

State	Metropolitan Area	Metropolitan Area Components			
Texas	**Beaumont-Port Arthur, TX MSA [GO Zone]**	Hardin County	Jefferson County	Orange County	
	Brazoria County, TX HMFA [GO Zone]	Brazoria County			
	Houston-Baytown-Sugar Land, TX HMFA (part) [GO Zone]	Chambers County	Fort Bend County	Galveston County	Harris County
		Liberty County	Montgomery County	San Jacinto County	
	McAllen-Edinburg-Mission, TX MSA	Hidalgo County			
Puerto Rico	**Aguadilla-Isabela-San Sebastián, PR MSA**	Aguada Municipio	Aguadilla Municipio	Añasco Municipio	Isabela Municipio
		Lares Municipio	Moca Municipio	Rincón Municipio	Municipio
	Arecibo, PR HMFA	Arecibo Municipio	Camuy Municipio	Hatillo Municipio	
	Barranquitas-Aibonito-Quebradillas, PR HMFA	Aibonito Municipio	Barranquitas Municipio	Ciales Municipio	Maunabo Municipio
		Orocovis Municipio	Quebradillas Municipio		
	Caguas, PR HMFA	Caguas Municipio	Cayey Municipio	Cidra Municipio	Gurabo Municipio
		San Lorenzo Municipio			
	Fajardo, PR MSA	Ceiba Municipio	Fajardo Municipio	Luquillo Municipio	
	Guayama, PR MSA	Arroyo Municipio	Guayama Municipio	Patillas Municipio	
	Mayagüez, PR MSA	Hormigueros Municipio	Mayagüez Municipio		
	Ponce, PR MSA	Juana Díaz Municipio	Ponce Municipio	Villalba Municipio	
	San Germán-Cabo Rojo, PR MSA	Cabo Rojo Municipio	Lajas Municipio	Sabana Grande Municipio	San Germán Municipio
	San Juan-Guaynabo, PR HMFA	Aguas Buenas Municipio	Barceloneta Municipio	Bayamón Municipio	Canóvanas Municipio
		Carolina Municipio	Cataño Municipio	Comerío Municipio	Corozal Municipio
		Dorado Municipio	Florida Municipio	Guaynabo Municipio	Humacao Municipio
		Juncos Municipio	Las Piedras Municipio	Loíza Municipio	Manatí Municipio
		Morovis Municipio	Naguabo Municipio	Naranjito Municipio	Río Grande Municipio
		San Juan Municipio	Toa Alta Municipio	Toa Baja Municipio	Trujillo Alto Municipio
		Vega Alta Municipio	Vega Baja Municipio	Yabucoa Municipio	

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2008 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (OMB Metropolitan Area Definitions, December 5, 2005)

State	Nonmetropolitan Counties or County Equivalents			
Alabama	Choctaw County [GO Zone]	Clarke County [GO Zone]	Marengo County [GO Zone]	Pickens County [GO Zone]
	Sumter County [GO Zone]	Washington County [GO Zone]		
Alaska	Aleutians East Borough	Bethel Census Area	Bristol Bay Borough	Dillingham Census Area
	Haines Borough	Juneau City and Borough	Ketchikan Gateway Borough	Kodiak Island Borough
	Lake and Peninsula Borough	Nome Census Area	North Slope Borough	Northwest Arctic Borough
	Prince of Wales-Outer Ketchikan Census Area	Sitka City and Borough	Skagway-Hoonah-Angoon Census Area	Southeast Fairbanks Census Area
	Valdez-Cordova Census Area	Wade Hampton Census Area	Wrangell-Petersburg Census Area	Yakutat City and Borough
	Yukon-Koyukuk Census Area			
Arizona	Apache County	Cochise County	Gila County	Graham County
	Greenlee County	La Paz County	Navajo County	Santa Cruz County
Arkansas	Baxter County	Carroll County	Cleburne County	Cross County
	Drew County	Hempstead County	Lafayette County	Mississippi County
	Montgomery County	Nevada County	Newton County	Pike County
	St. Francis County	Searcy County		
California	Amador County	Colusa County	Del Norte County	Humboldt County
	Lake County	Lassen County	Mariposa County	Mendocino County
	Modoc County	Mono County	Nevada County	Plumas County
	Sierra County	Siskiyou County	Tehama County	Trinity County
	Tuolumne County			
Colorado	Archuleta County	Chaffee County	Custer County	Dolores County
	Eagle County	Garfield County	Gunnison County	Hinsdale County
	Jackson County	Lake County	La Plata County	Mineral County
	Montrose County	Ouray County	Pitkin County	Rio Blanco County
	Routt County	San Juan County	San Miguel County	Summit County
Delaware	Sussex County			
Florida	Calhoun County	Citrus County	Columbia County	DeSoto County
	Dixie County	Flagler County	Franklin County	Glades County [GO Zone]
	Gulf County	Hamilton County	Hardee County	Hendry County [GO Zone]
	Highlands County	Holmes County	Jackson County	Lafayette County
	Levy County	Liberty County	Madison County	Monroe County [GO Zone]
	Okeechobee County [GO Zone]	Putnam County	Suwannee County	Taylor County
	Walton County	Washington County		
Georgia	Gilmer County	Rabun County	Talbot County	Towns County
	Union County	White County		
Hawaii	Hawaii County	Kalawao County	Kauai County	Maui County
Idaho	Benewah County	Blaine County	Bonner County	Boundary County
	Camas County	Cassia County	Elmore County	Gooding County
	Idaho County	Jerome County	Lincoln County	Twin Falls County
Kentucky	Butler County	Carlisle County	Elliott County	Fulton County
	Lincoln County	Montgomery County	Nicholas County	Owen County
	Powell County	Rowan County	Simpson County	Whitley County
Louisiana	Allen Parish [GO Zone]	Assumption Parish [GO Zone]	Beauregard Parish [GO Zone]	Bienville Parish
	Claiborne Parish	Evangeline Parish [GO Zone]	Iberia Parish [GO Zone]	Jefferson Davis Parish [GO Zone]
	Natchitoches Parish	Red River Parish	Sabine Parish [GO Zone]	St. James Parish [GO Zone]
	St. Mary Parish [GO Zone]	Tangipahoa Parish [GO Zone]	Vermilion Parish [GO Zone]	Vernon Parish [GO Zone]
	Washington Parish [GO Zone]			
Maine	Franklin County	Hancock County	Knox County	Lincoln County
	Oxford County	Piscataquis County	Waldo County	Washington County
Maryland	St. Mary's County			

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2008 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (OMB Metropolitan Area Definitions, December 5, 2005)

State	Nonmetropolitan Counties or County Equivalents			
Massachusetts	Dukes County	Nantucket County		
Michigan	Benzie County	Otsego County		
Mississippi	Adams County [GO Zone]	Amite County [GO Zone]	Attala County [GO Zone]	Benton County
	Bolivar County	Calhoun County	Chickasaw County	Choctaw County [GO Zone]
	Claiborne County [GO Zone]	Clarke County [GO Zone]	Clay County	Coahoma County
	Covington County [GO Zone]	Franklin County [GO Zone]	Greene County [GO Zone]	Grenada County
	Holmes County [GO Zone]	Humphreys County [GO Zone]	Issaquena County	Jasper County [GO Zone]
	Jefferson County [GO Zone]	Jefferson Davis County [GO Zone]	Jones County [GO Zone]	Kemper County [GO Zone]
	Lafayette County	Lauderdale County [GO Zone]	Lawrence County [GO Zone]	Leake County [GO Zone]
	Leflore County	Lincoln County [GO Zone]	Lowndes County [GO Zone]	Marion County [GO Zone]
	Montgomery County	Neshoba County [GO Zone]	Newton County [GO Zone]	Noxubee County [GO Zone]
	Oktibbeha County [GO Zone]	Panola County	Pearl River County [GO Zone]	Pike County [GO Zone]
	Quitman County	Scott County [GO Zone]	Sharkey County	Smith County [GO Zone]
	Sunflower County	Tallahatchie County	Tippah County	Walthall County [GO Zone]
	Warren County [GO Zone]	Washington County	Wayne County [GO Zone]	Wilkinson County [GO Zone]
	Winston County [GO Zone]	Yalobusha County	Yazoo County [GO Zone]	
Missouri	Taney County			
Montana	Beaverhead County	Flathead County	Madison County	Meagher County
	Mineral County	Park County	Ravalli County	
Nevada	Churchill County	Douglas County	Elko County	Lyon County
New Hampshire	Belknap County	Carroll County	Cheshire County	Grafton County
	Merrimack County			
New Mexico	Catron County	Chaves County	Cibola County	Curry County
	DeBaca County	Grant County	Guadalupe County	Hidalgo County
	Lincoln County	Luna County	McKinley County	Mora County
	Quay County	Rio Arriba County	Roosevelt County	San Miguel County
	Sierra County	Socorro County	Taos County	
New York	Cortland County	Essex County	Fulton County	Greene County
	Hamilton County	Jefferson County	Schuyler County	Seneca County
	Sullivan County			
North Carolina	Avery County	Chowan County	Cleveland County	Dare County
	Gates County	Hyde County	Jackson County	Jones County
	McDowell County	Mitchell County	Pasquotank County	Perquimans County
	Rutherford County	Tyrrell County	Washington County	Watauga County
	Wilson County			
Oklahoma	Hughes County	Okfuskee County	Payne County	
Oregon	Clatsop County	Coos County	Crook County	Curry County
	Douglas County	Gilliam County	Grant County	Hood River County
	Jefferson County	Josephine County	Lincoln County	Linn County
	Morrow County	Tillamook County	Union County	Wallowa County
	Wasco County	Wheeler County		
Pennsylvania	Columbia County	Monroe County	Wayne County	
South Carolina	Beaufort County	Georgetown County	Jasper County	
Tennessee	Bedford County	Haywood County		

Nonmetropolitan DDAs labeled "[GO Zone]" are designated under the Gulf Opportunity Zone Act of 2005. Their populations do not count against the 20 percent population cap on nonmetropolitan areas designated DDAs by reason of high land, construction, and utility costs relative to area median gross income.

2008 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (OMB Metropolitan Area Definitions, December 5, 2005)

State	Nonmetropolitan Counties or County Equivalents			
Texas	Anderson County	Angelina County [GO Zone]	Brown County	Burnet County
	Camp County	Coke County	Coleman County	Comanche County
	Dallam County	Eastland County	Falls County	Frio County
	Gillespie County	Grimes County	Henderson County	Houston County
	Jasper County [GO Zone]	Kerr County	Kleberg County	Lamar County
	Leon County	Llano County	Madison County	Marion County
	Mills County	Montague County	Morris County	Nacogdoches County [GO Zone]
	Navarro County	Newton County [GO Zone]	Palo Pinto County	Polk County [GO Zone]
	Red River County	Sabine County [GO Zone]	San Augustine County [GO Zone]	San Saba County
	Shelby County [GO Zone]	Titus County	Trinity County [GO Zone]	Tyler County [GO Zone]
	Walker County [GO Zone]			
Utah	Beaver County	Garfield County	Kane County	Millard County
	Piute County	Rich County	Sanpete County	Sevier County
	Wasatch County	Wayne County		
Vermont	Addison County	Bennington County	Windham County	
Virginia	Northampton County	Prince Edward County	Westmoreland County	
Washington	Clallam County	Garfield County	Grant County	Grays Harbor County
	Jefferson County	Kittitas County	Klickitat County	Lewis County
	Mason County	Okanogan County	San Juan County	
West Virginia	Calhoun County	Doddridge County	Grant County	Pendleton County
	Roane County	Taylor County		
Wyoming	Teton County			
American Samoa	Eastern District	Manu'a District	Swains Island	Western District
Guam	Guam			
Northern Mariana Islands	Northern Islands Municipality	Rota Municipality	Saipan Municipality	Tinian Municipality
Puerto Rico	Adjuntas Municipio	Coamo Municipio	Culebra Municipio	Jayuya Municipio
	Las Marias Municipio	Maricao Municipio	Salinas Municipio	Santa Isabel Municipio
	Utuado Municipio	Vieques Municipio		
Virgin Islands	St. Croix	St. John	St. Thomas	

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[FR Doc. 07–4620 Filed 9–17–07; 8:45 am]

BILLING CODE 4210–67–C

Federal Register

Tuesday,

September 18, 2007

Part V

Department of Homeland Security

Bureau of Customs and Border Protection

19 CFR Part 122

Advance Information on Private Aircraft Arriving and Departing the United States; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 122

[USCBP–2007–0064]

RIN 1651–AA41

Advance Information on Private Aircraft Arriving and Departing the United States

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking (NPRM) proposes to require the pilot of any private aircraft arriving in the United States from a foreign port or location or departing the United States for a foreign port or location to transmit to Customs and Border Protection (CBP) an advance electronic transmission of information regarding each individual traveling onboard the aircraft.

This NPRM also proposes to add data elements to the existing notice of arrival requirements and proposes a new notice of departure requirement. The notice of arrival and notice of departure information would be required to be submitted to CBP through an approved electronic data interchange system in the same transmission as the corresponding arrival or departure manifest information. Under the NPRM, this data must be received by CBP no later than 60 minutes before an arriving private aircraft departs from a foreign location and no later than 60 minutes before a private aircraft departs a United States airport or location for a foreign port or place.

Finally, this NPRM proposes to clarify landing rights procedures and departure clearance procedures as well as expressly setting forth CBP's authority to restrict aircraft from landing in the United States based on security and/or risk assessments; or, based on those assessments, to specifically designate and limit the airports from where aircraft may land or depart.

DATES: Written comments must be received on or before November 19, 2007.

ADDRESSES: You may submit comments, identified by docket number USCBP–2007–0064, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number.
- *Mail:* Border Security Regulations Branch, Office of International Trade, U.S Customs and Border Protection, 1300 Pennsylvania Avenue, NW., (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and document number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of International Trade, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: For Operational Matters—Michael Kaneris, Office of Field Operations, Customs and Border Protection, 202–344–1584. For Legal Matters—Glen Vereb, Branch Chief, Office of International Trade, Regulations & Rulings, Customs and Border Protection, 202–572–8700.

SUPPLEMENTARY INFORMATION: The Supplementary Information section is organized as follows:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the notice of proposed rulemaking. The Department of Homeland Security (DHS) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposal. Comments that will provide the most assistance to the Department in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

II. Background and Current Requirements

A. Background and Authorities

Pursuant to 19 U.S.C. 1433(c), the Secretary of Homeland Security has broad authority to regulate all aircraft, including private aircraft, arriving in and departing from the United States. A private aircraft, in contrast to a commercial aircraft,[1] is generally any aircraft engaged in a personal or business flight to or from the United States which is not carrying passengers and/or cargo for commercial purposes. *See* 19 CFR 122.1(h). Specifically, section 1433(c) provides that the pilot of any aircraft arriving in the United States or the Virgin Islands from any foreign

[1] 19 CFR 122.1(d) defines ''commercial aircraft'' as any aircraft transporting passengers and/or cargo for some payment or other consideration, including money or services rendered. It should be noted that if either the arrival or departure leg of an aircraft's journey is commercial, then CBP considers both legs of the journey to be commercial. 19 CFR 122.1(h) defines a private aircraft as any aircraft engaged in a personal or business flight to or from the U.S. which is not: (1) Carrying passengers and/or cargo for commercial purposes; or (2) leaving the U.S. carrying neither passengers nor cargo in order to lade passengers and/or cargo in a foreign area for commercial purposes; or (3) returning to the U.S. carrying neither passengers nor cargo in ballast after leaving with passengers and/or cargo for commercial purposes.

location is required to comply with such advance notification, arrival reporting, and landing requirements as regulations may require. This statute provides CBP with the authority to deny landing rights to aircraft within the United States based on security and/or risk assessments, or based on those assessments to specifically designate and limit the airports where aircraft may land. In addition, under the statute (19 U.S.C. 1433(d)), an aircraft pilot is required to present or transmit to CBP through an electronic interchange system such information, data, documents, papers or manifests as the regulations may require. Section 1433(e) provides, among other things, that aircraft after arriving in the United States or Virgin Islands may only depart from the airport in accordance with regulations prescribed by the Secretary. Additionally, pursuant to 19 U.S.C. 1644a and 1644, the Secretary can designate ports of entry for aircraft and apply vessel entry and clearance regulations to civil aviation.

B. Current Requirements for All Aircraft

1. Advance Notice of Arrival

DHS currently requires aircraft pilots of all aircraft entering the United States from a foreign area, except aircraft of a scheduled airline arriving under a regular schedule, to give advance notice of arrival. *See* 19 CFR 122.31(a). Advance notice of arrival must be furnished by the pilot of the aircraft and is generally given when the aircraft is in the air. As described below, the regulations set forth the general rule for advance notice of arrival for private aircraft and specific requirements for certain aircraft arriving from areas south of the United States, including aircraft from Cuba.

a. Private Aircraft Arriving in the United States

Pursuant to 19 CFR 122.22, private aircraft, except those arriving from areas south of the United States (discussed below), are required to give advance notice of arrival as set forth in 19 CFR 122.31. This notice must be given to the port director at the place of first landing by radio, telephone, or other method, or through the Federal Aviation Administration (FAA)'s flight notification procedure. 19 CFR 122.31(c). The advance notice of arrival requires information about the number of alien passengers and number of U.S. citizen passengers, but it does not require any identifying information for individual passengers onboard to be submitted.[2] The current regulations do not provide a specific timeframe when the notice of arrival shall be given, but direct that the pilot shall furnish such information far enough in advance to allow inspecting officers to reach the place of first landing of the aircraft. 19 CFR 122.31(e).

b. Certain Aircraft Arriving From Areas South of the United States

Certain aircraft entering the continental United States from a foreign area in the Western Hemisphere south of the United States are subject to special advance notice of arrival and landing requirements. 19 CFR 122.23–24. These aircraft include all private aircraft and commercial unscheduled aircraft with a seating capacity of 30 passengers or less or maximum payload capacity of 7,500 pounds or less. Pursuant to 19 CFR 122.23(b), such aircraft are required to give advance notice of arrival to CBP at the nearest designated airport to the border or coastline crossing point listed in 19 CFR 122.24(b). These aircraft must also provide advance notice of arrival at least one hour before crossing the U.S. coastline or border. 19 CFR 122.23(b). The pilot may provide advance notice of arrival for these aircraft by radio, telephone, or other method, or through the FAA flight notification procedure. The advance notice of arrival for such aircraft arriving from areas south of the United States must include the information listed in 19 CFR 122.23(c).[3] Aircraft arriving from areas south of the United States that are subject to the requirements of 19 CFR 122.23 are required to land at designated airports listed in 19 CFR 122.24(b), unless CBP grants an exemption from the special landing requirement.[4]

c. Aircraft Arriving From Cuba

The current regulations require private aircraft entering the United States from Cuba, except for public aircraft,[5] to give advance notice of arrival at least one hour before crossing the U.S. border or coastline. 19 CFR 122.152 and 122.154. This notice must be furnished either directly to the CBP Officer in charge at the relevant airport listed in 19 CFR 122.154(b)(2), or through the FAA flight notification procedure. The advance notice of arrival for aircraft from Cuba must include the information listed in 19 CFR 122.154(c).[6]

2. Permission to Land (Landing Rights)

The current regulations require the owner or operator of any aircraft, including a private aircraft, arriving at a landing rights airport or user fee airport to request permission to land—known as landing rights—from CBP (19 CFR 122.14(a) and 122.15(a)). A ''landing rights airport'' is defined as any airport, other than an international airport or user fee airport, at which flights from a foreign area are given permission by CBP to land. *See* 19 CFR 122.1(f). A ''user fee airport'' is defined as an airport so designated by CBP and flights from a foreign area may be granted permission to land at a user fee airport rather than at an international airport or a landing rights airport. *See* 19 CFR 122.1(m). An informational listing of user fee airports is contained in § 122.15. Permission to land must be secured from the director of the port, or his representative, at the port nearest the first place of landing for both landing rights airports and user fee airports. However, the current regulations do not set forth a precise application procedure or timeframe for securing permission to land.

C. Current Requirements for Commercial Aircraft

In contrast to private aircraft, commercial air carriers are required to

[2] 19 CFR 122.31 provides that the contents of advance notice of arrival shall include the following information: (1) Type of aircraft and registration number; (2) name of aircraft commander; (3) place of last foreign departure; (4) international airport of intended landing or other place at which landing has been authorized by CBP; (5) number of alien passengers; (6) number of citizens passengers; and (7) estimated time of arrival.

[3] Section 122.23(c) provides that the contents of the advance notice of arrival shall include the following: (1) Aircraft registration number; (2) name of aircraft commander; (3) number of U.S. citizen passengers; (4) number of alien passengers; (5) place of last departure; (6) estimated time and location of crossing U.S. border/coastline; (7) estimated time of arrival; and (8) name of intended U.S. airport of first landing, as listed in § 122.24, unless an exemption has been granted under § 122.25, or the aircraft has not landed in foreign territory or is arriving directly from Puerto Rico, or the aircraft was inspected by CBP officers in the U.S. Virgin Islands.

[4] 19 CFR 122.25 sets forth the procedures concerning exemption from special landing requirements—known as an overflight privilege.

[5] 19 CFR 122.1(i) defines ''public aircraft'' as any aircraft owned by, or under the complete control and management of the U.S. government or any of its agencies, or any aircraft owned by or under the complete control and management of any foreign government which exempts public aircraft of the U.S. from arrival, entry and clearance requirements similar to those provided in subpart C of this part, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

[6] 19 CFR 122.154(c) provides that the contents of advance notice of arrival shall state: (1) Type of aircraft and registration number; (2) name of aircraft commander; (3) number of U.S. citizen passengers; (4) number of alien passengers; (5) place of last foreign departure; (6) estimated time and location of crossing the U.S. coast or border; and (7) estimated time of arrival.

electronically transmit passenger arrival manifests to CBP no later than 15 [7] minutes (19 CFR 122.75a(b)(2)) after the departure of the aircraft from any place outside the United States (19 CFR 122.49a(b)(2)) and passenger departure manifests no later than 15 minutes prior to departure of the aircraft from the United States. Manifests for crew members on passenger flights and all-cargo flights and manifests for non-crew members on all-cargo flights must be electronically transmitted to CBP no later than 60 minutes prior to the departure of any covered flight to, continuing within, or overflying the United States (19 CFR 122.49b(b)(2)) and no later than 60 minutes prior to the departure of any covered flight from the United States. 19 CFR 122.75b(b)(2).

Commercial air carriers transmit passenger information to CBP through the Advance Passenger Information System (APIS) which is an electronic data interchange system [8] approved by DHS for use by international commercial air and vessel carriers. By receiving the advance passenger and crew information, CBP is able to perform enforcement and security queries against various multi-agency law enforcement and terrorist databases in connection with international flights to and from the United States. Based on the manifest reporting requirements for commercial air carriers, CBP currently has the capability to review advance information on commercial air travelers to assess potential risks.

This proposed rule allows for a risk assessment of all private aircraft traveling internationally and will aid CBP in obtaining advance information so that risk analyses may be conducted before the departure of private aircraft bound for or departing the United States in an effort to improve border security. This rule serves to provide the nation, private aircraft operators, and the international traveling public, additional security from the threat of terrorism and enhance CBP's ability to carry out its border enforcement mission.

[7] CBP published a final rule in the **Federal Register** on August 23, 2007 (72 FR 48320), which amends its regulations regarding the electronic transmission of manifest data by commercial air carriers bound for and departing the United States, to require the APIS transmission 30 minutes prior to securing of the aircraft doors (APIS 30 interactive and non-interactive) and up to the time the aircraft doors are secured for APIS Quick Query (AQQ) transmissions. This rule takes effect February 19, 2008.

[8] A DHS-approved electronic data interchange system is any electronic system that is approved by DHS that allows the public to interface with DHS for the purposes of transmitting required information. CBP anticipates that most transmissions will be made using eAPIS which is an example of such an application and is an application that is available through the internet. The pilot may choose to authorize an agent to transmit the data if internet access is not available at the pilot's location or for other reasons of convenience. The pilot remains responsible for the timing and accuracy of the transmission.

III. Proposed Requirements

Private aircraft operators currently do not electronically transmit to CBP advance notice of arrival through an approved electronic data interchange system. In addition, private aircraft, unlike commercial aircraft, are not presently required to electronically transmit passenger arrival and departure manifests that provide identifying information for individuals onboard the aircraft before arriving in or departing from the United States. CBP regulations do not contain precise procedures for a private aircraft operator to follow to request permission to land at landing rights airports. Private aircraft operators are also currently not required to provide notice of departure or obtain clearance prior to departing the United States.

Accordingly, CBP's current regulations do not provide CBP with the necessary information to fully assess potential threats posed by private aircraft entering into and departing from the United States. To adequately and accurately assess potential threats posed by private aircraft entering and departing the United States, CBP needs sufficient and timely information about the impending arrival or departure of a private aircraft, the passengers and crew onboard, and clear procedures regarding landing rights and departure clearance. Without these tools, CBP currently lacks the capability to perform risk assessments on passengers traveling on private aircraft.

Under this rule, CBP is proposing regulatory changes that include requiring the advance electronic information of notice of arrival combined with passenger manifest data for those aboard private aircraft that arrive in and depart from the United States. Additionally, this rule proposes amendments regarding notice of arrival requirements, landing rights, and departure requirements.

The proposed changes would provide CBP with more detailed information about arriving and departing private aircraft and persons onboard within a timeframe that would enable CBP to more fully pre-screen information on all individuals intending to travel onboard private aircraft to or from the United States. As a result, CBP would more accurately assess the risks that certain flights may pose to national security and take appropriate action. Moreover, these changes would enable CBP to minimize potential threats posed by private aircraft by identifying high-risk individuals and aircraft and allowing CBP to coordinate with airport personnel and domestic or foreign government authorities to take appropriate action when warranted by a threat.

A. General Requirements for Private Aircraft Arriving in the United States

This rule proposes to add new passenger manifest and departure requirements and to revise existing notice of arrival and landing rights requirements for private aircraft arriving in the United States from a foreign location or departing the United States to a foreign location.

1. Notice of Arrival

This NPRM proposes to require pilots of private aircraft arriving in the United States from a foreign port or location to transmit notice of arrival information to CBP through a CBP-approved electronic data interchange system no later than 60 minutes prior to departure from a foreign port or location. ''Departure'' would be defined as ''the point at which the aircraft is airborne and the aircraft is en route directly to its destination.'' *See* proposed § 122.22(a). Under this proposed rule, aircraft that are not originally destined for the United States but are diverted to the United States due to an emergency would be required to transmit an arrival manifest no later than 30 minutes prior to arrival, although the circumstances of the emergency situation and whether or not the aircraft is equipped to make the transmission will be taken into consideration by CBP.

This NPRM also proposes expanding the data elements that private aircraft operators are required to report in the notice of arrival. The current contents of notice of arrival reporting for private aircraft require that the following data elements be submitted by telephone, radio or other method: type of aircraft and registration number, name of aircraft commander, place of last foreign departure, international airport or intended landing or other place at which landing has been authorized by CBP, number of alien passengers, number of citizen passengers and estimated time of arrival. This rule proposes to clarify the existing notice of arrival reporting requirements for private aircraft by duplicating the data elements provided in 19 CFR 122.31, which apply to all aircraft (including private aircraft), into 19 CFR 122.22, which applies specifically to private aircraft. This NPRM also proposes to expand the data elements for notice of arrival regarding private aircraft. The proposed data elements for notice of arrival report include the following: aircraft registration number, decal number, place of last departure, aircraft tail number, aircraft call sign, aircraft type, date of aircraft arrival, complete itinerary, estimated time of arrival, estimated time and location of crossing the U.S. border/coastline, name of intended airport of first landing, owner/lessee name and address, pilot license number, pilot address, country of issuance of pilot's license, transponder code, color, operator name and address, and 24-hour point of contact.

2. Arrival Manifest Data Requirement

This NPRM proposes that private aircraft pilots arriving in the United States would be responsible for submitting manifest data that provides identifying information for all individuals on board the aircraft no later than 60 minutes prior to departure from a foreign port or location. This manifest data would be provided simultaneously with the notice of arrival information and would include the following information for all individuals onboard the aircraft: full name; date of birth; gender; citizenship; country of residence; status on board the aircraft (i.e., passenger or crew member); travel document type; travel document number; travel document country of issuance; travel document expiration date; alien registration number, redress number (if available),[9] and address while in the United States.

The pilot collecting the manifest information would be required to compare the manifest information with the information on the DHS-approved travel document presented by each individual attempting to travel onboard the aircraft to ensure that the manifest information is correct, that the travel document appears to be valid for travel to the United States, and the traveler is the person to whom the travel document was issued.[10] If additional passengers not included in the manifest arrive after the manifest data was submitted to CBP, the pilot would be responsible for submitting a corrected manifest. The pilot would be required to await CBP approval of the corrected manifest before departing. Additionally, any approval to land at a United States airport or location from a foreign port or location that was previously granted by CBP as a result of the original manifest's submission would be invalidated. If a subsequent manifest is submitted less than 60 minutes prior to departure, the private aircraft pilot must resubmit the arrival manifest and receive approval from CBP for the amended manifest containing the added or amended information before allowing the aircraft to depart the foreign location, or the aircraft may be, as appropriate, denied clearance to depart, diverted from arriving in the United States, or denied permission to land in the United States. Certain private aircraft may also be subject to the Transportation Security Administration (TSA) security and boarding requirements for large aircraft including those contained in 49 CFR 1544.

3. Method of Transmitting Information to CBP

Under this proposed rule, both the notice of arrival information and manifest data must be transmitted in the same transmission via electronic submissions through the Electronic Advance Passenger Information System (eAPIS)[11] Web portal or by a CBP-approved alternative transmission medium. More information on eAPIS is available at *http://www.cbp.gov* (related links). Under this proposed rule, any electronic data interchange system approved by CBP would be an acceptable method for private aircraft to submit notice of arrival information and manifest data. The pilot would be responsible for submitting this information, but could authorize another party to submit the information on his or her behalf. After CBP receives the submitted information, DHS would send a message to the submitter of the manifest information before departure from a foreign airport indicating that the information has been received and specifying whether landing rights have been granted at the requested airport, granted at a different airport designated by CBP, or denied. There will be a transitional period during which the current manual process of requesting landing rights will gradually be replaced by this automated procedure.

A private aircraft pilot who chooses not to transmit required arrival manifest data by means of a CBP-approved interactive[12] electronic transmission system would be required to make batch manifest transmissions by means of a non-interactive electronic transmission system approved by CBP. The private aircraft pilot would make a single, complete batch manifest transmission containing all the required arrival manifest data for every person on the aircraft.

After receipt of the manifest information, as in the case where the manifest information is conveyed using a CBP-approved interactive electronic transmission system, CBP would perform an initial security vetting of the data and grant, deny, or restrict landing rights as appropriate.

Through an analysis of the data provided by the pilot's transmission, DHS will be able to identify passengers who are designated as selectee or no-fly. This and other information will be used in determining whether landing rights or clearance will be granted, restricted or denied. DHS is evaluating whether to inform the pilot, in the event that CBP denies or restricts landing rights for the plane, which passenger(s) has been identified by DHS on the selectee or no-fly lists so that the pilot may better understand potential threats to the security of the aircraft. In addition, such notification could avoid additional flight delays or disruptions by allowing the pilot to remove that individual from the flight until such time as the individual resolves the selectee or no-fly designation with TSA under TSA's redress system. Accordingly, DHS is soliciting public comments on the economic costs and benefits of notifying a pilot about an individual selectee or no-fly match being aboard the aircraft. DHS is also seeking comments on any operational and privacy concerns associated with sharing such information.

B. Certain Aircraft Arriving From Areas South of the United States

This NPRM proposes a new timeframe for reporting notice of arrival, which would be no later than 60 minutes prior to the aircraft's departure to the United States from a foreign port or location, as opposed to 60 minutes before crossing the U.S border as is the current requirement. Under this proposed rule, notice of arrival would be required, along with manifest data being furnished as set forth in 19 CFR 122.22 for private aircraft, which requires

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[9] The redress number is the number assigned by DHS to an individual processed through the redress procedures described in 49 CFR part 1560, subpart C.

[10] Further information outlining the various types of travel documents approved by DHS can be found at: *http://www.cbp.gov/linkhandler/cgov/travel/inspections_carriers_facilities/doc_require.ctt/doc_require.pdf*.

[11] eAPIS is an online transmission system that meets all current and future APIS data element requirements for all mandated APIS transmission types.

[12] CBP anticipates that most pilots of private aircraft will use the eAPIS web portal as the transmission method of choice because of the ease and availability of internet access. Electronic EDIFACT transmissions are currently used by commercial carriers to transmit passenger data to CBP. Pilots of large business aircraft could choose to use this or other CBP-approved electronic transmission medium rather than the eAPIS portal.

submission of such information to CBP via an electronic data interchange system approved by CBP. All other aircraft subject to 19 CFR 122.23, would be required to report notice of arrival as required under that provision.

This NPRM also proposes to correct a discrepancy between the definition of ''private aircraft'' in 19 CFR 122.23, which encompasses both private aircraft and, in some instances, small, unscheduled commercial aircraft and the general definition provided for ''private aircraft'' in 19 CFR 122.1(h). To correct this discrepancy, CBP is proposing to revise the heading for 19 CFR 122.23 to read ''Certain aircraft arriving from areas south of the U.S.'' Additionally, the proposed regulatory text would expressly state the specific types of aircraft to which the section applies rather than defining them. These proposed amendments to 19 CFR 122.23 would make the section easier for the public to understand.

C. Notice of Arrival for Private Aircraft Arriving From Cuba

This NPRM proposes that private aircraft arriving from Cuba, as provided for in 19 CFR 122.154, would be required to provide notice of arrival and manifest data in the same manner as private aircraft that are subject to proposed 19 CFR 122.22. Private aircraft arriving from Cuba would continue to be required to provide notice of arrival information to the specifically designated airport where the aircraft will land: Miami International Airport, Miami Florida; John F. Kennedy International Airport, Jamaica, New York; or Los Angeles International Airport, Los Angeles, California.

D. Private Aircraft Departing the United States

1. Departure Manifest Data Requirement

This NPRM proposes to require the pilot of a private aircraft departing the United States to a foreign port or location to submit a departure manifest to CBP. Similar to the arrival manifest, the departure manifest would contain information identifying all individuals onboard the aircraft. The timeframe for submission of the departure manifest would be no later than 60 minutes prior to departure from the United States to a foreign port or location. This NPRM clarifies the pilot's responsibility to ensure that a departure manifest regarding all individuals onboard the private aircraft is submitted and specifies that the transmission of the manifest data must be through any CBP-approved electronic data interchange system. The information to be provided in the departure manifest would be the same as that provided in the arrival manifest.[13]

Under this proposed rule, the pilot collecting the information would be responsible for comparing the travel document presented by each individual attempting to travel onboard the aircraft with the DHS-approved travel document information he or she is transmitting to CBP. The pilot would also be responsible for ensuring that the information is correct and that the traveler is the person to whom the travel document was issued.

This NPRM clarifies that if a departure manifest is submitted to CBP before all individuals arrive for transport, the pilot must resubmit an amended manifest with all required information, and any clearance previously granted by CBP as a result of the original manifest's submission would be invalidated. The pilot would have an obligation to make necessary changes to the departure manifest and specifies what circumstances would constitute necessary changes (*e.g.*, adding a name or any required information or amending previously submitted information). If changes are submitted less than 60 minutes prior to departure, the pilot would be required to receive a new clearance from CBP before departing.

2. Notice of Departure

This NPRM proposes to require private aircraft leaving the United States for a foreign port or location to obtain clearance from CBP prior to departing from the United States. Under this proposed rule, private aircraft pilots departing for a foreign port or location would be required to submit an electronic departure manifest on all individuals onboard the aircraft, and notice of departure information no later than 60 minutes prior to departure. Notice of departure elements would constitute the following information: aircraft registration number, type of aircraft, call sign (if available), decal number, place of last departure, date of aircraft departure, estimated time of departure, estimated time and location of crossing U.S. border/coastline, name of intended foreign airport of first landing, owner/lessees name (last, first, and, if available, middle), owner/lessees street address (number and street, city, state, zip code, country, telephone number, fax number, and e-mail address), pilot/private aircraft pilot name (last, first and, if available, middle), pilot license number, pilot street address: (number and street, city, state, zip code, country, telephone number, fax number and e-mail address), country of issuance of pilot's license, operator name (last, first, and if available, middle), operator street address: (number and street, city, state, zip code, country, telephone number, fax number and e-mail address), 24-hour point of contact (*e.g.*, broker, dispatcher, repair shop) name, transponder code (beacon number), color, complete itinerary (intended foreign airport destinations for 24 hours following departure).

3. Aircraft Required To Clear

The existing regulatory language in 19 CFR 122.61 exempts public and private aircraft from leaving the United States for a foreign area from having to obtain clearance prior to departing from the United States. As such, CBP is proposing to revise paragraph (a) of § 122.61 to indicate that private aircraft leaving the United States for a foreign area are required to obtain clearance from CBP as set forth in the language proposed for § 122.26. The paragraph will further state that all other aircraft, except public aircraft, leaving the United States or the U.S. Virgin Islands are required to clear if they carry passengers and/or merchandise for hire or take aboard or discharge passengers and/or merchandise for hire in a foreign area. *See* 19 CFR 122.61(a) and (b). These proposed changes are necessary to effectuate the new requirements regarding the filing of a departure manifest and electronic clearance for private aircraft prior to departure for a foreign port or place.

The process of receiving electronic clearance to depart would operate in substantially the same manner as submission of an arrival data manifest. Prior to departing the United States, a private aircraft pilot would submit departure manifest data on all individuals onboard the aircraft, await CBP's confirmation of receipt of the manifest data, and await CBP clearance to depart the United States. CBP's clearance, *i.e.*, permission to depart the United States, would be transmitted to the pilot from CBP via an electronic data interchange system approved by CBP.

As with the transmission of arrival data manifests, a private aircraft pilot that chooses not to transmit required notice of departure, departure manifests by means of a CBP-approved interactive

[13] Like the arrival manifest, the departure manifest would include the following information for all individuals onboard the aircraft: Full name; date of birth; gender; citizenship; country of residence; status on board the aircraft (i.e., passenger or crew member); travel document type; travel document number; travel document country of issuance; travel document expiration date; alien registration number, redress number if available and address while in the United States.

electronic transmission system must make batch manifest transmissions in accordance with CBP policy as discussed earlier in section III.A.3., entitled ''Method of Transmitting Information to CBP.''

E. Landing Rights

CBP currently requires all aircraft arriving at a landing rights airport to request permission to land, known as landing rights, from CBP. Given CBP's authority to deny landing rights within the United States and to restrict landing to airports designated by CBP,[14] this NPRM proposes to expressly state CBP's authority to deny permission to land in the United States and/or limit aircraft landing locations.

1. Landing Rights Airports

The current provisions of 19 CFR 122.14 do not adequately provide for when or how the request for permission to land at a landing rights airport should be given to the director of the port of entry or station nearest the first place of landing. Under this proposed rule, private aircraft pilots would seek permission to land at a landing rights airport when the notice of arrival information is transmitted via a CBP approved electronic data interchange system no later than 60 minutes prior to departure from a foreign port or place pursuant to the proposed language in 19 CFR 122.22. The pilot would then be required to wait for CBP to transmit a message that landing rights have been granted at the particular landing rights airport. These requirements would also apply to private aircraft landing at user fee airports pursuant to 19 CFR 122.15. This proposed rule would also expressly provide that CBP may deny landing rights or direct an aircraft to a landing location.

2. Aircraft Required To Land

This NPRM proposes to clarify CBP's authority to deny permission to land in the United States and to designate the specific locations at which unusually high-risk aircraft may land. Currently under 19 CFR 122.32, any aircraft that is coming into the United States from a foreign location (including Puerto Rico) must land unless exempted by the Federal Aviation Administration. This proposed rule would expressly provide that CBP's authority to deny permission to land in the United States, in addition to the current FAA exemption excusing the requirement to land, as the two exclusive reasons that an aircraft coming into the United States from a foreign area shall not land in the United States.

IV. Regulatory Analyses

A. Executive Order 12866 (Regulatory Planning and Review)

This proposed rule is not ''economically significant'' under Executive Order 12866 because it will not result in the expenditure of more than $100 million in any one year. The Office of Management and Budget (OMB) has reviewed this rule under that Order. Comments regarding the analysis may be submitted by any of the methods described under the **ADDRESSES** section of this document.

Currently, pilots of private aircraft must submit information regarding themselves, their aircraft, and any passengers prior to arrival into the United States from a foreign airport. Depending on the location of the foreign airport, the pilot provides the arrival information 1 hour prior to crossing the U.S. coastline or border (areas south of the United States) or during the flight (other areas). The information that would be required for the pilot is similar to what is already required; it would need to be submitted earlier (60 minutes prior to departure). No notice of departure information is currently required for private aircraft departing the United States for a foreign airport.

CBP estimates that 138,559 private aircraft landed in the United States in 2006 based on current notice of arrival data. These aircraft collectively carried 455,324 passengers; including the 138,559 pilots of the aircraft, this totals 593,883 individuals arriving in the United States aboard private aircraft. CBP estimates that approximately two-thirds are U.S. citizens and the remaining one-third is comprised of non-U.S. citizens.

Table 1 summarizes the 2006 arrival information for the top airports in the United States that receive private aircraft from foreign airports. Fort Lauderdale received the most arrivals, with nearly 10 percent of the U.S. private aircraft arrivals. The top 18 airports received approximately 60 percent of the total. As shown, the average number of passengers per arrival varies by port; JFK has the highest passengers per arrival (4.7) while Bellingham, Washington, has the lowest (1.4). Nationwide, the average number of passengers carried per arrival is 3.3.

TABLE 1.—SUMMARY OF ARRIVALS AND PASSENGERS ABOARD PRIVATE AIRCRAFT (2006)

Airport	Aircraft/pilot arrivals	Percent of total aircraft	Passenger arrivals	Percent of total passengers	Average passengers per arrival
Ft. Lauderdale Intl. Airport, FL	12,831	9	37,848	8%	2.9
West Palm Beach, FL	9,031	7	25,109	6	2.8
New York-Newark, Newark, NJ	6,464	5	29,779	7	4.6
Miami Airport, FL	5,676	4	17,596	4	3.1
Fort Pierce, FL	5,216	4	11,376	2	2.2
Otay Mesa, CA	4,944	4	18,216	4	3.7
San Juan, PR	4,090	3	10,821	2	2.6
Hidalgo, TX	3,827	3	8,647	2	2.3
Calexico, CA	3,597	3	7,963	2	2.2
JFK Airport, NY	3,497	3	16,492	4	4.7
Laredo, TX	3,280	2	10,974	2	3.3
Tucson, AZ	3,013	2	9,059	2	3.0
El Paso, TX	2,548	2	9,544	2	3.7
Houston/Galveston, TX	2,534	2	10,850	2	4.3
Seattle, WA	2,529	2	6,238	1	2.5
Brownsville, TX	2,303	2	7,027	2	3.1
San Antonio, TX	2,185	2	8,520	2	3.9
Bellingham, WA	2,160	2	3,106	1	1.4
Remaining 223 airports	58,834	42	206,159	45	3.5

[14] See 19 U.S.C. 1433(c) and 1644a(b)(1)(A).

TABLE 1.—SUMMARY OF ARRIVALS AND PASSENGERS ABOARD PRIVATE AIRCRAFT (2006)—Continued

Airport	Aircraft/pilot arrivals	Percent of total aircraft	Passenger arrivals	Percent of total passengers	Average passengers per arrival
Total	138,559	100	455,324	100	3.3

CBP does not currently compile data for departures, as there are currently no requirements for private aircraft departing the United States. For this analysis, we assume that the number of departures is the same as the number of arrivals.

Thus, we estimate that 140,000 private aircraft arrivals and 140,000 departures will be affected annually as a result of the rule. While the current data elements for pilots are very similar to the proposed requirements, the data elements for passengers are more extensive. Based on the current information collected and accounting for proposed changes in the data elements, CBP estimates that one submission, which includes the arrival information and the passenger manifest data, will require 15 minutes of time (0.25 hours) for the pilot to complete. Additionally, CBP estimates that it will require each of the 460,000 passengers 1 minute (0.017 hours) to provide the required data to the pilot. These data are all contained on a passenger's passport or alien registration card and are thus simple to provide to the pilot.

Currently, arrival information is submitted by radio, telephone, or other method, or through the FAA's flight notification procedure. Under the proposed requirements, pilots must submit the arrival and passenger data through the eAPIS web portal, electronic EDIFACT transmissions, or an approved alternative transmission medium. For this analysis, we assume that pilots will use the eAPIS system, as it is a user-friendly and costless method to submit the required data elements to CBP, and the pilot need only have access to a computer with web capabilities to access the system. We also assume that pilots will have access to a computer and the internet to make the electronic submission. This analysis in no way precludes a private aircraft operator from implementing another approved method of transmission; however, we believe that most pilots, particularly those not traveling for business, will choose to submit the required data through the least-cost option: eAPIS.

Currently, private aircraft arriving from areas south of the United States must provide advance notice of arrival at least one hour before crossing the U.S. coastline or border. There are no such timing requirements for other areas. Thus, some pilots and their passengers may decide that in order to comply with the new requirements, including submitting information through eAPIS and waiting for a response from CBP, they must convene at the airport earlier than they customarily would. We do not have any information on how many, if any, pilots or passengers would need to change their practices. For this analysis, we assume that 50 percent of the pilots and passengers would need to arrive 15 minutes (0.25 hours) earlier than customary. This would result in 70,000 affected pilots (140,000 arrivals * 0.5) and 231,000 affected passengers (70,000 arrivals * 3.3 passengers per arrival) for a total of 301,000 individuals affected.

To estimate the costs associated with the time required to input data into eAPIS, we use the value of an hour of time as reported in the Federal Aviation Administration's (FAA) document on critical values, $37.20.[15] This represents a weighted cost for business and leisure general aviation travelers. CBP believes this is a reasonable approximation of the average value of a pilot's and traveler's time. However since this estimate may be an underestimate of the value of time for general aviation passengers and pilot's engaged in international travel, CBP requests comments on this estimate.

The cost to submit advance notice of arrival data through eAPIS would be approximately $1.3 million (140,000 arrivals * 0.25 hours * $37.20 per hour). Similarly, costs to submit advance notice of departure data would be $1.3 million, for a total cost for pilots to submit the required data elements of $2.6 million annually. The cost for passengers to provide the data to the pilot to be entered into eAPIS would be approximately $570,000 (920,000 arrivals and departures * 0.017 hours * $37.20 per hour). Total costs for the eAPIS submissions would be $3.2 million annually.

To estimate the costs of arriving earlier than customary, we again use the value of time of $37.20 per hour. As noted previously, we assume that 301,000 pilots and passengers may choose to arrive 0.25 hours earlier than customary. This would result in a cost of approximately $2.8 million for arrivals and $2.8 million for departures, a total of $5.6 million annually (301,000 individuals * 0.25 hours * $37.20 per hour * 2).

Additionally, CBP estimates the potential costs to resolve issues with passengers that have been designated as ''No Fly'' based on the eAPIS process. While a law enforcement response is not required under this proposed rule, CBP estimates the costs for such a response in order to avoid underestimating the costs of this rule. For the purposes of this analysis, CBP estimates that on two occasions annually, a general aviation flight has a passenger that is designated ''No Fly,'' but through the resolution process is downgraded from ''No Fly'' and the entire traveling party continues on their flight. CBP assumes that four individuals (the pilot plus three passengers) would be affected by a one-hour delay to resolve the no-fly designation. CBP also assumes the resolution process will require 1 hour of law enforcement time at a TSA-estimated cost of $62.43 per hour. The total annual costs for these incidents would be approximately $422 [(four individuals * $37.20 * 1 hour + 1 individual * $62.43 * 1 hour) * two incidents].

CBP also estimates the potential costs for pilots and passengers who may be denied landing rights as a result of their eAPIS submission. For the purposes of this analysis, CBP estimates that once per year, a general aviation flight is denied landing rights. CBP again assumes that four individuals (the pilot plus three passengers) will be affected, but that the delay will be eight hours to coordinate a law enforcement response. CBP assumes that four law enforcement personnel will be involved in the investigation. The total annual costs for this incident would be approximately $3,188 [(four individuals * $37.20 * 8 hours + 4 individuals * $62.43 * 8 hours) * one incident]. CBP is seeking comment on the assumptions made for these incident responses.

[15] Federal Aviation Administration, 2005. Economic Values for FAA Investment and Regulatory Decisions, A Guide. Prepared by GRA, Inc. July 3, 2007. Table ES–1. Per the instructions of this guidance document (see pages 1–1 and 1–3), this estimate has not been adjusted for inflation.

The total annual cost of the proposed rule is expected to be $8.8 million. Over 10 years, this would total a present value cost of $66.0 million at a 7 percent discount rate ($77.1 million at a 3 percent discount rate).

The primary impetus of this rule is the security benefit afforded by a more timely submission of APIS information. Ideally, the quantification and monetization of the beneficial security effects of this regulation would involve two steps. First, we would estimate the reduction in the probability of a successful terrorist attack resulting from implementation of the regulation and the consequences of the avoided event (collectively, the risk associated with a potential terrorist attack). Then we would identify individuals' willingness to pay for this incremental risk reduction and multiply it by the population experiencing the benefit. Both of these steps, however, rely on key data that are not available for this rule.

In light of these limitations, we conduct a ''breakeven'' analysis to determine what change in the reduction of risk would be necessary in order for the benefits of the rule to exceed the costs. Because the types of attack that could be prevented vary widely in their intensity and effects, we present a range of potential losses that are driven by casualty estimates and asset destruction. For example, the average general aviation aircraft is 3,384 pounds and carries an average of a little over four people (1 pilot and 3 passengers).[16] Some general aviation aircraft, however, are much larger and carry many more people and thus could have potentially higher casualty losses and property damages in the event of an incident. We use two estimates of a Value of a Statistical Life (VSL) to represent an individual's willingness to pay to avoid a fatality onboard an aircraft, based on economic studies of the value individuals place on small changes in risk: $3 million per VSL and $6 million per VSL.

Additionally, we present four attack scenarios. Scenario 1 explores a situation where only individuals are lost (no destruction of physical property). In this scenario, we estimate the losses if an attack resulted in 4 (average number of people on a general aviation aircraft—one pilot, three passengers) to 1,000 casualties but no loss of physical capital. We acknowledge that this scenario is not necessarily realistic because an attack that would result in 1,000 casualties would almost certainly also result in loss of physical assets; however, this scenario provides a useful high end for the risk reduction probabilities required for the rule to break even.

Scenario 2 explores a situation where individuals are lost and a lower-value aircraft is destroyed. The value of the aircraft lost, $94,661, is based on the value from the FAA critical values study cited previously.[17] This value is for an aircraft built prior to 1982, which is a substantial proportion (75 percent) of the general aviation fleet of aircraft.[18] Scenario 3 explores a situation where individuals are lost and a higher-value aircraft is destroyed. The value of the aircraft lost is $1,817,062 (aircraft built in 1982 and later).

Scenario 4 explores a situation where individuals are lost and substantial destruction of physical capital is incurred. In this scenario we again estimate individual lives lost but now consider a massive loss of physical capital (the 9/11 attack is an example of such an event).

Casualties are again estimated as before using the two VSL estimates. To value the loss of capital assets, we use a report from the Comptroller of the City of New York that estimated $21.8 billion in physical capital destruction as a result of the 9/11 attacks on the World Trade Center.[19] This report also estimates the ''ripple effects'' of the attack—the air traffic shutdown, lost tourism in New York City, and long-term economic impacts; however, we do not compare these secondary impacts to the direct costs of the rule estimated previously because we do not know the extent to which these losses are transfers versus real economic losses. In this analysis we compare direct costs to direct benefits to estimate the risk reduction required for the rule to break even.

Again, the impacts in these scenarios would be driven largely by the number of people aboard the aircraft and the size of the aircraft.

The annual risk reductions required for the proposed rule to break even are presented in Table 2 for the four attack scenarios, the two estimates of VSL, and a range of casualties. As shown, depending on the attack scenario, the VSL, and the casualty level, risk would have to be reduced less than 1 percent (Scenario 4, 1,000 casualties avoided) to 73.1 percent (Scenario 1, 4 casualties avoided) in order for the benefits of the rule to exceed the costs to break even.

TABLE 2.—ANNUAL RISK REDUCTION REQUIRED (%) FOR NET COSTS TO EQUAL BENEFITS

[Annualized at 7 percent over 10 years]

Casualties avoided	Scenario 1: loss of life only	Scenario 2: loss of life and aircraft (low value)	Scenario 3: loss of life and aircraft (high value)	Scenario 4: loss of life and catastrophic loss of property
$3M VSL:				
4	73.1	72.6	63.5	<1
10	29.3	29.2	27.6	<1
100	2.9	2.9	2.9	<1
1,000	0.3	0.3	0.3	<1
$6M VSL:				
4	36.6	36.4	34.0	<1
10	14.6	14.6	14.2	<1
100	1.5	1.5	1.5	<1
1,000	0.1	0.1	0.1	<1

[16] Federal Aviation Administration. 2005. Economic Values for FAA Investment and Regulatory Decisions, A Guide. Prepared by GRA, Inc. July 3, 2007. Table ES–1.

[17] Federal Aviation Administration. 2005. Economic Values for FAA Investment and Regulatory Decisions, A Guide. Prepared by GRA, Inc. July 3, 2007. Table ES–1. This estimate has not been adjusted for inflation.

[18] Federal Aviation Administration. 2005. Economic Values for FAA Investment and Regulatory Decisions, A Guide. Prepared by GRA, Inc. July 3, 2007. Table 3–14.

[19] Thompson, Jr., William C. Comptroller, City of New York. ''One Year Later: The Fiscal Impact of 9/11 on New York City.'' September 4, 2002.

B. Regulatory Flexibility Act

CBP has prepared this section to examine the impacts of the proposed rule on small entities as required by the Regulatory Flexibility Act (RFA, *See* 5 U.S.C. 601–612). A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

When considering the impacts on small entities for the purpose of complying with the RFA, CBP consulted the Small Business Administration's guidance document for conducting regulatory flexibility analysis. Per this guidance, a regulatory flexibility analysis is required when an agency determines that the rule will have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule. We do not have information on the number of pilots and passengers traveling for business versus leisure or how many businesses, regardless of size, would be affected by the proposed requirements. Those private individuals who are flying for leisure, rather than business, would not be considered small entities because individuals are not considered small entities. Some of the affected pilots and passengers are flying for business purposes; however, we do not know if these businesses are small entities or not. This rule may thus affect a substantial number of small entities.

In any case, the cost to submit data to CBP through eAPIS would be, at most, approximately $50 per submission ($9.30 for the APIS submission; $9.30 * 3.3 passengers + $9.30 * 1 pilot for potential early arrival). CBP believes such an expense would not rise to the level of being a ''significant economic impact.'' We welcome comments on our assumptions. If we do not receive comments that demonstrate that the rule results in significant economic impacts, we may certify that this action does not have a significant economic impact on a substantial number of small entities during the final rule.

Comments regarding the analysis may be submitted by any of the methods described under the **ADDRESSES** section of this document.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the UMRA, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the UMRA is any provision in a Federal agency regulation that will impose an enforceable duty upon state, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. This rule would not result in such an expenditure.

D. Executive Order 13132: Federalism

Executive Order 13132 requires CBP to develop a process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' Policies that have federalism implications are defined in the Executive Order to include rules 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.'' CBP has analyzed the proposed rule in accordance with the principles and criteria in the Executive Order and have determined that it does not have federalism implications or a substantial direct effect on the States. The proposed rule requires private aircraft arriving in the United States from a foreign location or departing the United States to a foreign port or location to comply with notice of arrival requirements, passenger manifest requirements, and permission to land at landing rights airports. States do not conduct activities with which this rule would interfere. For these reasons, this proposed rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

E. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988. That Executive Order requires agencies to conduct reviews, before proposing legislation or promulgating regulations, to determine the impact of those proposals on civil justice and potential issues for litigation. The Order requires that agencies make reasonable efforts to ensure that a regulation clearly identifies preemptive effects, effects on existing Federal laws and regulations, any retroactive effects of the proposal, and other matters. CBP has determined that this regulation meets the requirements of Executive Order 12988 because it does not involve retroactive effects, preemptive effects, or other matters addressed in the Order.

F. National Environmental Policy Act

CBP has evaluated this rule for purposes of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*). CBP has determined that an environmental statement is not required, since this action is non-invasive and there is no potential impact of any kind. Record of this determination has been placed in the rulemaking docket.

G. Paperwork Reduction Act

There are two proposed collections of information in this document. The proposed collection is contained in 19 CFR 122.22. This information would be used by CBP to further improve the ability of CBP to identify high-risk individuals onboard private aircraft so as to prevent terrorist acts and ensure aircraft and airport safety and security. The likely respondents and/or record keepers are individuals and businesses. Under § 122.22 a private aircraft pilot would be required to file an advance arrival manifest on all individuals via an electronic data interchange system approved by CBP no later than 60 minutes prior to the aircraft departing to the United States from a foreign port or location. Additionally, a private aircraft pilot would be required to file an advance departure manifest on all individuals onboard a private aircraft through an electronic data interchange system approved by CBP no later than 60 minutes prior to that aircraft departing from the United States to a foreign port or location. eAPIS is one of several CBP approved electronic data interchange systems that private aircraft pilots will use to transmit information about all of the individuals aboard an aircraft.

The collection of information encompassed within this proposed rule has been submitted to the OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

Estimated Burden Requirements for Pilots of Private Aircraft Under § 122.22

Estimated annual reporting and/or recordkeeping burden: 70,000 hours.

Estimated average annual burden per respondent/recordkeeper: 30 minutes (0.50) hours.

Estimated number of respondents and/or recordkeepers: 140,000.

Estimated annual frequency of responses: 2.

Estimated Burden Requirements for Passengers

Estimated annual reporting and/or recordkeeping burden: 7820.

Estimated reporting burden per respondent/or recordkeeping burden: 1 minute.

Estimated number of respondents and/or recordkeepers: 460,000.

Estimated annual frequency of responses: 1.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503. Comments should be submitted within the timeframe that comments are due regarding the substance of the proposal.

Comments are invited on: (a) Whether the collection 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 collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

H. Privacy Statement

A Privacy Impact Assessment (PIA) for APIS was updated on August 8, 2007 and posted on the DHS Web site. In conjunction with the APIS Pre-departure final rule published in the **Federal Register** on August 23, 2007 (72 FR 48320), a System of Records Notice was published in the **Federal Register** on that same date (72 FR 48349). In light of the amendments to the regulations proposed in this document, CBP is in the process of updating the APIS PIA. Additionally, CBP and the DHS Privacy Office are currently reviewing the APIS SORN to determine if any amendments are needed to ensure privacy compliance for APIS. Accordingly, if it is determined that amendments are necessary, an update to the SORN will be published.

DHS is seeking comment on the privacy impacts of the expansion of the population that will be covered by this rule. Presently, the Advanced Passenger Information System (APIS) System of Records Notice (SORN) published in the **Federal Register** on August 23, 2007 (72 FR 48349) would cover this population. The APIS SORN currently covers the collection of APIS information in both the commercial and private aircraft context. Comments will be considered and addressed in the development of this final rule, additionally any updates to the APIS SORN required by the rule or DHS's analysis of the comments from this NPRM will be incorporated into the APIS SORN prior to the collection of personally identifiable information under the rule.

V. Signing Authority

The signing authority for these amendments falls under 19 CFR 0.2(a). Accordingly, this document is signed by the Secretary of Homeland Security (or his delegate).

VI. Proposed Regulatory Amendments

List of Subjects in 19 CFR Part 122

Air carriers, Aircraft, Airports, Reporting and recordkeeping requirements, Security measures.

Amendments to the Regulations

For the reasons stated in the preamble, it is proposed to amend part 122 of title 19, Code of Federal Regulations (19 CFR part 122) as follows:

PART 122—AIR COMMERCE REGULATIONS

1. The general authority citation for part 122 and the specific authority citations for sections 122.12, 122.14, 122.22, 122.23, 122.24, 122.26, 122.32, 122.61 and 122.154 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

2. Revise § 122.0 to read as follows:

§ 122.0 Scope.

(a) Applicability. The regulations in this part relate to the entry and clearance of aircraft and the transportation of persons and cargo by aircraft, and are applicable to all air commerce. They do not apply to Guam, Midway, American Samoa, Wake, Kingman Reef, Johnston Island, and other insular possessions of the United States not specified herein. They do apply to the U.S. Virgin Islands as stated in subpart N (§§ 122.41 through 122.144), and Cuba as stated in subpart O (§§ 122.151 through 122.158).

(b) Authority of Other Agencies. Nothing in this part is intended to divest or diminish authority and operational control that are vested in the FAA or any other agency, particularly with respect to airspace and aircraft safety.

3. Amend § 122.12 by revising paragraph (c) to read as follows:

§ 122.12 Operation of international airports.

* * * * *

(c) *FAA rules; denial of permission to land.*—(1) *Federal Aviation Administration.* International airports must follow and enforce any requirements for airport operations, including airport rules that are set out by the Federal Aviation Administration in 14 CFR part 91.

(2) *Customs and Border Protection.* CBP, based on security or other risk assessments, may limit the locations where aircraft entering the United States from a foreign port or place may land. Consistent with § 122.0(b) of this Title, CBP has the authority to deny permission to land in the United States, based upon security or other risk assessments.

(3) *Commercial aircraft.* Permission to land at an international airport may be denied to a commercial aircraft if advance electronic information for incoming foreign cargo aboard the aircraft has not been received as provided in § 122.48a, except in the case of emergency or forced landings.

(4) *Private Aircraft.* Permission to land at an international airport will be denied if the pilot of a private aircraft arriving from a foreign port or place fails to submit an electronic manifest and notice of arrival pursuant to § 122.22, except in the case of emergency or forced landings.

* * * * *

4. Revise § 122.14 to read as follows:

§ 122.14 Landing rights airports.

(a) *Permission to land.* Permission to land at a landing rights airport may be given as follows:

(1) *Scheduled flight.* The scheduled aircraft of a scheduled airline may be allowed to land at a landing rights airport. Permission is given by the director of the port, or his representative, at the port nearest to which first landing is made.

(i) *Additional flights, charters or changes in schedule—(A) Scheduled aircraft.* If a new carrier plans to set up a new flight schedule, or an established carrier makes changes in its approved schedule, landing rights may be granted by the port director.

(ii) *Additional or charter flight.* If a carrier or charter operator wants to begin operating or to add flights, application shall be made to the port director for landing rights. All requests shall be made not less than 48 hours before the intended time of arrival, except in emergencies. If the request is oral, it shall be put in writing before or at the time of arrival.

(2) *Private aircraft.* The pilots of private aircraft are required to secure permission to land from CBP following transmission of the advance notice of arrival via an electronic data interchange system approved by CBP, pursuant to § 122.22. Prior to departure as defined in section 122.22(a), from a foreign port or place, the pilot of a private aircraft must receive a message from CBP that landing rights have been granted for that aircraft at a particular airport.

(3) *Other aircraft.* Following advance notice of arrival pursuant to § 122.31, all other aircraft may be allowed to land at a landing rights airport by the director of the port of entry or station nearest the first place of landing.

(4) *Denial or withdrawal of landing rights.* Permission to land at a landing rights airport may be denied or permanently or temporarily withdrawn for any of the following reasons:

(i) Appropriate and/or sufficient Federal Government personnel are not available;

(ii) Proper inspectional facilities or equipment are not available at, or maintained by, the requested airport;

(iii) The entity requesting the landing rights has a history of failing to abide by appropriate instructions given by a CBP officer;

(iv) Reasonable grounds exist to believe that applicable Federal rules and regulations pertaining to safety, including cargo safety and security, CBP, or other inspectional activities may not be adhered to;

(v) The granting of the requested landing rights would not be in the best interests of the Government; or

(vi) CBP has deemed it necessary to deny landing rights to an aircraft.

(5) *Appeal of denial or withdrawal of landing rights for commercial scheduled aircraft as defined in 122.1(d).* In the event landing rights are denied or subsequently permanently withdrawn by CBP, within 30 days of such decision, the affected party may file a written appeal with the Assistant Commissioner, Office of Field Operations, Headquarters.

(6) *Emergency or forced landing.* Permission to land is not required for an emergency or forced landing (covered under § 122.35).

(b) *Payment of expenses.* In the case of an arrival at a location outside the limits of a port of entry, the owner, operator or person in charge of the aircraft must pay any added charges for inspecting the aircraft, passengers, employees and merchandise when landing rights are given (see §§ 24.17 and 24.22(e) of this chapter).

5. Revise § 122.22 to read as follows:

§ 122.22 Electronic manifest requirement for all individuals onboard private aircraft arriving in and departing from the United States; notice of arrival and departure information.

(a) *Definitions.* For purposes of this section:

Departure. ''Departure'' means the point at which the aircraft is airborne and the aircraft is en route directly to its destination.

Departure Information. ''Departure Information'' refers to the data elements that are required to be electronically submitted to CBP pursuant to paragraph (c)(4) of this section.

Pilot. ''Pilot'' means the individual(s) responsible for operation of an aircraft while in flight.

Travel Document. ''Travel Document'' means U.S. Department of Homeland Security approved travel documents.

United States. ''United States'' means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States.

(b) *Electronic manifest requirement for all individuals onboard private aircraft in the U.S.; notice of arrival.*

(1) *General requirement.* The private aircraft pilot is responsible for ensuring the notice of arrival and manifest information regarding each individual onboard the aircraft are transmitted to CBP. The pilot is responsible for submitting this information, but may authorize another party to submit the information on their behalf. All data must be transmitted to CBP by means of an electronic data interchange system approved by CBP and must set forth the information specified in this section. All data pertaining to the notice of arrival for the aircraft and the manifest data regarding each individual onboard the aircraft must be transmitted at the same time via an electronic data interchange system approved by CBP.

(2) *Time for submission.* The private aircraft pilot is responsible for ensuring that the information specified in paragraphs (b)(3) and (b)(4) of this section is transmitted to CBP:

(i) No later than 60 minutes prior to departure of the aircraft; or

(ii) For flights not originally destined to the United States but diverted to a U.S. port due to an emergency, no later than 30 minutes prior to arrival; in cases of non-compliance, CBP will take into consideration that the carrier was not equipped to make the transmission and the circumstances of the emergency situation.

(3) *Manifest data required.* For private aircraft arriving in the United States the following identifying information for each individual onboard the aircraft must be submitted:

(i) Full name (last, first, and, if available, middle);

(ii) Date of birth;

(iii) Gender (F=female; M=male);

(iv) Citizenship;

(v) Country of residence;

(vi) Status onboard the aircraft;

(vii) Travel document type (*e.g.* P=passport; A=alien registration card);

(viii) Passport number, if a passport is required or approved DHS travel document;

(ix) Passport/Travel document country of issuance;

(x) Passport (or other DHS approved travel document) expiration date;

(xi) Alien registration number, where applicable;

(xii) Address while in the United States (number and street, city, state, and zip code). This information is required for all travelers and crew onboard the aircraft;

(xiii) Redress number, if available.

(4) *Notice of arrival.* The advance notice of arrival must include the following that applies to the aircraft:

(i) Aircraft registration number;

(ii) Type of Aircraft;

(iii) Call sign (if available);

(iv) Decal number;

(v) Place of last departure;

(vi) Date of aircraft arrival;

(vii) Estimated time of arrival;

(viii) Estimated time and location of crossing U.S. border/coastline;

(ix) Name of intended U.S. airport of first landing (as listed in 122.24 if applicable, unless an exemption has been granted under 122.25, or the aircraft was inspected by CBP Officers in the U.S. Virgin Islands);

(x) Owner/Lessee's name (last, first, and, if available, middle);

(xii) Owner/Lessee's address (number and street, city, state, zip code, country, telephone no., fax no., and e-mail address);

(xii) Pilot/Private aircraft pilot name;

(xiii) Pilot license number;

(xiv) Pilot street address (number and street, city, state, zip code, country, telephone no., fax no., and e-mail address);

(xv) Country of issuance of pilot's license;

(xvi) Operator name (last, first, and if available, middle);

(xvii) Operator street address (number and street, city, state, zip code, country, telephone no., fax no., and e-mail address);

(xviii) Transponder code (beacon number);

(xix) Color;

(xx) Complete Itinerary (foreign airports landed at within past 24 hours prior to landing in United States);

(xxi) 24-hour Point of contact (*e.g.*, broker, dispatcher, repair shop) name and phone number.

(5) *Reliable facilities.* When reliable means for giving notice are not available (for example, when departure is from a remote place) a landing must be made at a foreign place where notice can be sent prior to coming into the United States.

(6) *Permission to depart.* Prior to departure from the foreign port or place, the pilot of a private aircraft must receive a message from DHS approving departure for the United States, or following any instructions contained therein prior to departure.

(7) *Changes to manifest.* The private aircraft pilot is obligated to make necessary changes to the arrival manifest after transmission of the manifest to CBP. If changes are necessary, an updated and amended manifest must be resubmitted. If a subsequent manifest is submitted less than 60 minutes prior to departure, the private aircraft pilot must resubmit the arrival manifest and receive approval from CBP for the amended manifest containing the added or amended information before allowing the aircraft to depart the foreign location, or the aircraft may be, as appropriate, denied clearance to depart, diverted from arriving in the United States, or denied permission to land in the United States. If a subsequent amended manifest is submitted by the pilot, any approval to depart the foreign port or location previously granted by CBP as a result of the original manifest's submission is invalid.

(c) *Electronic manifest requirement for all individuals onboard private aircraft departing from the United States; departure information.*

(1) *General requirement.* The private aircraft pilot is responsible for ensuring that information regarding private aircraft departing the United States, and manifest data for all individuals onboard the aircraft is timely transmitted to CBP. The pilot is responsible for submitting this information, but may authorize another party to submit the information on their behalf. All data must be transmitted to CBP by means of an electronic data interchange system approved by CBP, and must set forth the information specified in paragraph (c)(3). All data pertaining to the aircraft, and all individuals on board the aircraft must be transmitted at the same time.

(2) *Time for submission.* The private aircraft pilot must transmit the electronic data required under paragraphs (c)(3) and (c)(4) of this section to CBP no later than 60 minutes prior to departing the United States.

(3) *Manifest data required.* For private aircraft departing the United States the following identifying information for all individuals onboard the aircraft must be submitted:

(i) Full name of all individuals onboard the aircraft (last, first, and, if available, middle);

(ii) Date of birth;

(iii) Gender (F=female; M=male);

(iv) Citizenship;

(v) Country of residence;

(vi) Status on board the aircraft;

(vii) Travel document type (*e.g.* P=passport; A=alien registration card);

(viii) Passport number, if a passport is required, or approved DHS travel document;

(ix) Passport/Travel document country of issuance, if such a document is required;

(x) Passport/Travel document expiration date, if such a document is required;

(xi) Alien registration number, where applicable;

(xii). Address while in the United States (number and street, city, state, and zip code). This information is required for all travelers and crew onboard the aircraft;

(xiii) Redress number, if available.

(4) *Notice of Departure information.* For private aircraft departing the United States, the following departure information must be submitted:

(i) Aircraft registration number;

(ii) Type of Aircraft;

(iii) Call sign (if available);

(iv) Decal number;

(v) Place of last departure;

(vi) Date of aircraft departure;

(vii) Estimated time of departure;

(viii) Estimated time and location of crossing U.S. border/coastline;

(ix) Name of intended foreign airport of first landing;

(x) Owner/Lessee's name (last, first, and, if available, middle);

(xi) Owner/Lessee's street address (number and street, city, state, zip code, country, telephone no., fax no., and e-mail address);

(xii) Pilot/Private aircraft pilot name (last, first and, if available, middle);

(xiii) Pilot license number;

(xiv) Pilot street address (number and street, city, state, zip code, country, telephone no., fax no., and e-mail address);

(xv) Country of issuance of pilot's license;

(xvi) Operator name (last, first, and if available, middle):

(xvii) Operator street address (number and street, city, state, zip code, country, telephone no., fax no., and e-mail address);

(xviii) 24-hour Point of contact (*e.g.*, broker, dispatcher, repair shop) name and phone number;

(xix) Transponder code (beacon number);

(xx) Color;

(xxi) Complete itinerary (intended foreign airport destinations for 24 hours following departure).

(5) *Permission to depart.* Prior to departure from the foreign port or place, the pilot of a private aircraft must receive a message from DHS approving departure for the United States, or following any instructions contained therein prior to departure.

(6) *Changes to manifest.* The private aircraft pilot is obligated to make necessary changes to the manifest data after transmission of the manifest to CBP. If changes are necessary, an updated and amended manifest must be resubmitted. If a subsequent manifest is submitted less than 60 minutes prior to departure, the private aircraft pilot must resubmit the arrival manifest and receive approval from CBP for the amended manifest containing the added or amended information before allowing the aircraft to depart the U.S. location, or the aircraft may be, as appropriate, denied clearance to depart from the United States. If a subsequent, amended manifest is submitted by the pilot, any clearance previously granted by CBP as a result of the original manifest's submission is invalid.

7. Amend § 122.23 by revising the section heading and the heading of paragraph (a), the introductory text of paragraph (a)(1) and paragraph (b). The revisions read as follows:

§ 122.23 Certain aircraft arriving from areas south of the U.S.

(a) *Application.* (1) This section sets forth particular requirements for certain aircraft arriving from south of the United States. This section is applicable to all aircraft except:

* * * * *

(b) *Notice of arrival.* All aircraft described in paragraph (a) of this section arriving in the Continental

United States via the U.S./Mexican border or the Pacific Coast from a foreign place in the Western Hemisphere south of 33 degrees north latitude, or from the Gulf of Mexico and Atlantic Coast from a place in the Western Hemisphere south of 30 degrees north latitude, from any place in Mexico, from the U.S. Virgin Islands, or (notwithstanding the definition of ''United States'' in 122.1(1)) from Puerto Rico (if conducting flight rules), must furnish a notice of intended arrival. Private aircraft must transmit an advance notice of arrival as set forth in § 122.22 of this part. Other than private aircraft, all aircraft to which this section applies must communicate to CBP notice of arrival at least one hour before crossing the U.S. coastline by telephone, radio, other method or the Federal Aviation Administration in accordance with paragraph (c) of this section.

8. Amend § 122.24 by revising the section heading, paragraph (a), the heading to paragraph (b) and removing all of the text of paragraph (b) except for the table. The revisions read as follows:

§ 122.24 Landing requirements for certain aircraft arriving from areas south of U.S.

(a) *In general.* Certain aircraft arriving from areas south of the United States that are subject to 122.23 are required to furnish a notice of intended arrival in compliance with § 122.23. Subject aircraft must land for CBP processing at the nearest designated airport to the border or coastline crossing point as listed under paragraph (b) unless exempted from this requirement in accordance with § 122.25. In addition to the requirements of this section, pilots of aircraft to which § 122.23 is applicable must comply with all other landing and notice of arrival requirements. This requirement shall not apply to those aircraft which have not landed in foreign territory or are arriving directly from Puerto Rico or if the aircraft was inspected by CBP officers in the U.S. Virgin Islands.

(b) *List of designated airports.*

* * * * *

9. Amend § 122.25 to replace the term ''private aircraft,'' wherever it appears with the term ''an aircraft subject to 122.23.''

10. Revise § 122.26 to read as follows:

§ 122.26 Entry and clearance.

Private aircraft, as defined in § 122.1(h) arriving in the United States, are not required to formally enter. No later than 60 minutes prior to departure from the United States to a foreign location, manifest data for all individuals onboard a private aircraft and departure information must be submitted as set forth in § 122.22(c). Private aircraft must not depart the United States to travel to a foreign location until CBP confirms receipt of the appropriate manifest and departure information as set forth in § 122.22(c), and grants electronic clearance via electronic mail or telephone.

11. Revise § 122.31 to read as follows:

§ 122.31 Notice of arrival.

(a) *Application.* Except as provided in paragraph (b) of this section, all aircraft entering the United States from a foreign area shall give advance notice of arrival.

(b) *Exceptions for scheduled aircraft of a scheduled airline.* Advance notice is not required for aircraft of a scheduled airline arriving under a regular schedule. The regular schedule must have been filed with the port director for the airport where the first landing is made.

(c) *Giving notice of arrival*—(1) *Procedure.*—(i) *Private aircraft.* The pilot of a private aircraft must give advance notice of arrival in accordance with § 122.22 of this part.

(ii) *Aircraft arriving from Cuba.* Aircraft arriving from Cuba must follow the advance notice of arrival procedures set forth in § 122.154 in subpart O of this part.

(iii) *Certain aircraft arriving from areas south of the United States.* Certain aircraft arriving from areas south of the United States (other than Cuba) must follow the advance notice of arrival procedures set forth in § 122.23 of this part.

(iv) *Other aircraft.* The commander of an aircraft not otherwise covered by paragraphs (c)(i), (c)(ii) and (c)(iii) of this section must give advance notice of arrival as set forth in paragraph (d) of this section. Notice shall be given to the port director at the place of first landing, either:

(A) Directly by radio, telephone, or other method; or

(B) Through Federal Aviation Administration flight notification procedure (see International Flight Information Manual, Federal Aviation Administration).

(2) *Reliable facilities.* When reliable means for giving notice are not available (for example, when departure is from a remote place) a landing shall be made at a place where notice can be sent prior to coming into the U.S.

(d) *Contents of notice.* The advance notice of arrival required by aircraft covered in paragraph (c)(iv) of this section must include the following information:

(1) Type of aircraft and registration number;

(2) Name of aircraft commander;

(3) Place of last foreign departure;

(4) International airport of intended landing or other place at which landing has been authorized by CBP;

(5) Number of alien passengers;

(6) Number of citizen passengers; and

(7) Estimated time of arrival.

(e) *Time of notice.* Notice of arrival as required pursuant to paragraph (c)(iv) of this section must be furnished far enough in advance to allow inspecting CBP officers to reach the place of first landing of the aircraft.

(f) Notice of other Federal agencies. When advance notice is received, the port director shall inform any other concerned Federal agency.

12. Revise § 122.32 to read as follows:

§ 122.32 Aircraft required to land.

(a) Any aircraft coming into the U.S., from an area outside of the U.S., is required to land, unless it is denied permission to land in the U.S. by CBP pursuant to 122.12(c), or is exempted from landing by the Federal Aviation Administration.

(b) *Conditional permission to land.* CBP has the authority to limit the locations where aircraft entering the U.S. from a foreign area may land. As such, aircraft must land at the airport designated in their APIS transmission unless instructed otherwise by CBP.

13. In § 122.61 revise the introductory text of paragraph (a) to read as follows:

§ 122.61 Aircraft required to clear.

(a) Private aircraft leaving the United States for a foreign area are required to clear as set forth in § 122.26. All other aircraft, except for public aircraft, leaving the United States for a foreign area, are required to clear if:

* * * * *

14. Amend § 122.154 by adding paragraph (d) below, and revising paragraph (a) to read as follows:

§ 122.154 Notice of arrival.

(a) *Application.* All aircraft entering the U.S. from Cuba shall give advance notice of arrival, unless it is an Office of Foreign Assets Control (OFAC) approved, scheduled commercial aircraft of a scheduled airline.

* * * * *

(d) *Private Aircraft.* In addition to these requirements, private aircraft must also give notice of arrival pursuant to § 122.22 of this part.

Michael Chertoff,

Secretary.

[FR Doc. E7–18121 Filed 9–17–07; 8:45 am]

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Federal Register

Tuesday,

September 18, 2007

Part VI

The President

Presidential Determination No. 2007–32 of September 13, 2007—Continuation of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Federal Register
Vol. 72, No. 180
Tuesday, September 18, 2007

Presidential Documents

Title 3—

The President

Presidential Determination No. 2007–32 of September 13, 2007

Continuation of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Memorandum for the Secretary of State [and] the Secretary of the Treasury

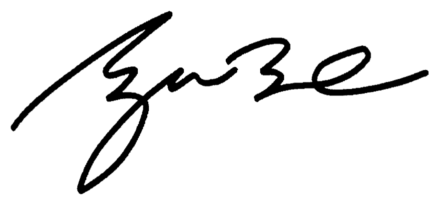
Under section 101(b) of Public Law 95–223 (91 Stat. 1625; 50 U.S.C. App. 5(b) note), and a previous determination on September 13, 2006 (71 *Fed. Reg.* 54399), the exercise of certain authorities under the Trading With the Enemy Act is scheduled to terminate on September 14, 2007.

I hereby determine that the continuation for 1 year of the exercise of those authorities with respect to the applicable countries is in the national interest of the United States.

Therefore, consistent with the authority vested in me by section 101(b) of Public Law 95–223, I continue for 1 year, until September 14, 2008, the exercise of those authorities with respect to countries affected by:

(1) the Foreign Assets Control Regulations, 31 C.F.R. part 500;
(2) the Transaction Control Regulations, 31 C.F.R. part 505; and
(3) the Cuban Assets Control Regulations, 31 C.F.R. part 515.

The Secretary of the Treasury is authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 13, 2007.

[FR Doc. 07–4653
Filed 9–17–07; 10:43 am]
Billing code 4811–33–M

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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National oil and hazardous substances contingency plan priorities list; published 9-18-07

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