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# Contents

**Federal Register**

Vol. 73, No. 66

Friday, April 4, 2008

**Agency for International Development**
NOTICES
Meetings:
Proposed Partner Vetting System, 18490
Notification and Federal Employee Antidiscrimination and Retaliation Act, 18490–18491

**Agricultural Marketing Service**
NOTICES
Meetings:
National Organic Standards Board, 18491–18492

**Agricultural Research Service**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18492–18493

**Agriculture Department**
*See* Agricultural Marketing Service
*See* Agricultural Research Service
*See* Forest Service
RULES
Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statues, 18433

**Alcohol, Tobacco, Firearms, and Explosives Bureau**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18563–18564

**Antitrust Division**
NOTICES
Public Comment and Response on Proposed Final Judgment, 18564–18570
Public Comments and Response on Proposed Final Judgment:
United States v. Monsanto Company and Delta and Pine Land Company, 18612–18674

**Blind or Severely Disabled, Committee for Purchase From People Who Are**
*See* Committee for Purchase From People Who Are Blind or Severely Disabled

**Centers for Disease Control and Prevention**
NOTICES
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel; Mining Occupational Safety and Health Research, 18536
National Center for Injury Prevention and Control Initial Review Group, 18537

**Centers for Medicare & Medicaid Services**
PROPOSED RULES
Medicaid Program: Home and Community-Based State Plan Services, 18676–18700

**Children and Families Administration**
NOTICES
Meetings:
President's Committee for People with Intellectual Disabilities, 18537

**Coast Guard**
NOTICES
Application; Review for Inclusion in the Shipboard Technology Evaluation Program; Draft Environmental Assessment:
Containerized Cargo Ship ATLANTIC COMPASS, 18543–18544
Applications; Review for Inclusion in the Shipboard Technology Evaluation Program; Draft Environmental Assessment:
Cruise Ship CORAL PRINCESS, 18544–18545
Integrated Tug and Barge MOKU PAHU, 18545–18546
Imposition of Conditions of Entry for Certain Vessels Arriving to the United States, Cuba, 18546

**Commerce Department**
*See* International Trade Administration
*See* National Institute of Standards and Technology
*See* National Oceanic and Atmospheric Administration
*See* Patent and Trademark Office

**Committee for Purchase From People Who Are Blind or Severely Disabled**
NOTICES
Procurement List; Additions and Deletions, 18495–18497

**Corporation for National and Community Service**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18520–18521

**Defense Department**
*See* Navy Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18521–18522

**Drug Enforcement Administration**
NOTICES
Application:
Rhodes Technologies; Manufacturer of Controlled Substances, 18570
Siegfried (USA), Inc.; Manufacturer of Controlled Substances, 18570

**Employment and Training Administration**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18572–18573

**Energy Department**
*See* Federal Energy Regulatory Commission

**Environmental Protection Agency**
PROPOSED RULES
Approval and Promulgation of Implementation Plans Florida:
Prevention of Significant Deterioration, 18466–18473
NOTICES
Environmental Impacts Statements; Availability, etc., 18527–18528
Environmental Impact Statements and Regulations; Availability of EPA Comments, 18526–18527
Meetings:
Children's Health Protection Advisory Committee, 18528

**Executive Office for Immigration Review**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18570–18572

**Federal Aviation Administration**
RULES
Airworthiness Directives:
Pilatus Aircraft Ltd. Model PC-12, PC-12/45, and PC-12/47 Airplanes, 18433–18436
Class E Airspace:
Anvik, AK; Revision, 18436–18437
Class E Airspace: Bettles, AK
Bettles, AK, 18437–18438
Establishment of Low Altitude Area Navigation Route T-209; GA, 18438–18439
Revision of Class E Airspace; New Stuyahok, AK, 18439–18440
PROPOSED RULES
Airworthiness Directives:
Honeywell International Inc.; TFE731 4, 4R, 5, 5AR, 5BR, and 5R Series Turbofan Engines, 18461–18462
NOTICES
Aviation Rulemaking Advisory Committee; Renewal, 18602
Intent to use the Airport Improvement Program Sponsor, Cargo, and Nonprimary Entitlement Funds for 2008 Fiscal Year, 18602–18603
Meetings:
RTCA Special Committee 159: Global Positioning System, 18603
RTCA Special Committee 186: Automatic Dependent Surveillance-Broadcast, 18603–18604
RTCA Special Committee 207/Airport Security Access, 18604
Special Committee 215 Aeronautical Mobile Satellite (Route) Services Next Generation Satellite Services and Equipment, 18605
Petition for Exemption; Summary of Petition Received, 18605

**Federal Communications Commission**
RULES
Fixed Microwave Services; Correction, 18443
NOTICES
Commercial Spectrum Enhancement Act and Modernization of Competitive Bidding Rules and Procedures; Implementation, 18528–18529

**Federal Deposit Insurance Corporation**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18529–18531

**Federal Emergency Management Agency**
NOTICES
Emergency Declaration:
Texas, 18546–18547
Emergency Declarations:
Texas, 18547
Major Disaster and Related Determinations:
Arkansas, 18547–18548
Georgia, 18548
Missouri, 18548–18549
Major Disaster Declaration:
Arkansas, 18549
Georgia, 18549–18550
Missouri, 18550
Major Disaster Declarations:
Kentucky, 18550

**Federal Energy Regulatory Commission**
NOTICES
Combined Notice of Filings, 18523–18525
Filings:
CenterPoint Energy Gas Transmission Co., 18525–18526

**Federal Reserve System**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18531–18532

**Fish and Wildlife Service**
NOTICES
Comprehensive Conservation Plans and Environmental Assessment; Request for Comments:
Piedmont National Wildlife Refuge, Jones and Jasper Counties, GA, 18552–18553

**Food and Drug Administration**
RULES
Technical Amendment; Withdrawal of Approval of NADAs:
Animal Drugs, Feeds, and Related Products, 18441–18442
Withdrawal:
Amendment to the Current Good Manufacturing Practice Regulations for Finished Pharmaceuticals, 18440–18441

**Forest Service**
NOTICES
Intent To Prepare An Environmental Impact Statement:
Bend/Ft. Rock Ranger District; Deschutes National Forest; Oregon; Dead Log, 18493–18494
New Fee Site:
Ochoco National Forest, 18494–18495

**General Services Administration**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18521–18522

**Health and Human Services Department**
*See* Centers for Disease Control and Prevention
*See* Centers for Medicare & Medicaid Services
*See* Children and Families Administration
*See* Food and Drug Administration
*See* National Institutes of Health
NOTICES
Privacy Act; Systems of Records, 18532–18535

Request for Nominations for an Independent Expert Panel and Submission of Relevant Data:
Non-Animal Methods and Approach for Evaluating Eye Irritation Potential for Antimicrobial Cleaning Products, 18535–18536

**Homeland Security Department**
*See* Coast Guard
*See* Federal Emergency Management Agency
*See* Transportation Security Administration
*See* U.S. Citizenship and Immigration Services
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18542–18543

**Housing and Urban Development Department**
**NOTICES**
Federal Property Suitable as Facilities to Assist the Homeless, 18552

**Indian Affairs Bureau**
**NOTICES**
Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 18553–18557

**Interior Department**
*See* Fish and Wildlife Service
*See* Indian Affairs Bureau
*See* Land Management Bureau
*See* National Park Service

**Internal Revenue Service**
**RULES**
Simplification of Entity Classification Rules; Correction, 18442–18443

**International Trade Administration**
**NOTICES**
Antidumping:
Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 18510–18511
Antidumping Duty Administrative Review; Preliminary Results and Partial Rescission:
Certain Tissue Paper Products from the People's Republic of China, 18497–18503
Antidumping Duty Administrative Review and Partial Rescission; Preliminary Results:
Glycine from the People's Republic of China, 18503–18510
Postponement of Preliminary Determination; Countervailing Duty Investigation:
Circular Welded Austenitic Stainless Pressure Pipe; People's Republic of China, 18511

**International Trade Commission**
**NOTICES**
Antidumping:
Persulfates from China, 18561
Steel Wire Garment Hangers From China, 18560–18561
Investigation:
Certain Cigarettes and Packaging Thereof, 18561–18562
Investigation; Correction:
Certain Catheters, Consoles and Other Apparatus for Cryosurgery, and Components Thereof, 18562

**Justice Department**
*See* Alcohol, Tobacco, Firearms, and Explosives Bureau
*See* Antitrust Division
*See* Drug Enforcement Administration
*See* Executive Office for Immigration Review
**NOTICES**
Lodging of Settlement Agreement Under the Comprehensive Environmental Response, and Liability Act, 18562–18563

**Labor Department**
*See* Employment and Training Administration
*See* Labor Statistics Bureau
*See* Veterans Employment and Training Service

**Labor Statistics Bureau**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18573–18574

**Land Management Bureau**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals; Correction, 18558
Filings:
Plats of Survey; Colorado, 18558
Proposed Withdrawal Extension and Opportunity for Public Meeting; Wyoming, 18558–18559

**Legal Services Corporation**
**NOTICES**
Calendar Year 2009 Competitive Grant Funds; Availability, 18574–18575

**National Aeronautics and Space Administration**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18521–18522

**National Archives and Records Administration**
**PROPOSED RULES**
Use of Meeting Rooms and Public Space, 18462–18465
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18575

**National Credit Union Administration**
**NOTICES**
Guidance Regarding Prohibitions Imposed by Section 205(d) of the Federal Credit Union Act, 18576–18583

**National Highway Traffic Safety Administration**
**NOTICES**
Petition for Exemption from the Vehicle Theft Prevention Standard:
Volkswagen, 18606–18607

**National Institute of Standards and Technology**
**NOTICES**
Meetings:
Manufacturing Extension Partnership Advisory Board, 18511–18512
National Fire Codes; Request for Comments, 18512–18513
National Fire Codes; Request for Proposals for Revision of Codes and Standards, 18513–18515

**National Institutes of Health**
**NOTICES**
Meetings:
Board of Scientific Counselors, 18537–18538

National Advisory Council on Alcohol Abuse and Alcoholism, 18538
National Center for Complementary and Alternative Medicine Special Emphasis Panel, 18538
National Eye Institute Special Emphasis Panel Training and Scientific Meeting Reviews, 18538
National Institute of General Medical Sciences Special Emphasis Panel, 18539
National Institute on Aging Special Emphasis Panel, 18539
Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, 18539–18542

**National Oceanic and Atmospheric Administration**
**RULES**
Fisheries in the Western Pacific:
Bottomfish and Seamount Groundfish Fisheries; Management Measures in the Main Hawaiian Islands, 18450–18460
Specifications and Management Measures:
Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries, 18443–18450
**PROPOSED RULES**
Fisheries of the Northeastern United States:
Atlantic Mackerel, Squid, and Butterfish Fisheries, 18483–18489
International Fisheries; Atlantic Highly Migratory Species, 18473–18483
**NOTICES**
Marine Mammals, 18515–18516
Meetings:
Fisheries of the South Atlantic; Southeastern Data, Assessment, and Review, 18516–18517
Fisheries of the South Atlantic and Gulf of Mexico; South Atlantic Fishery Management Council; Correction, 18517–18518
Fisheries of the South Atlantic, Gulf of Mexico, and Caribbean; Southeastern Data, Assessment, and Review, 18517
Gulf of Mexico Fishery Management Council, 18518

**National Park Service**
**NOTICES**
National Register of Historic Places:
Pending Nominations and Related Actions, 18559–18560

**National Science Foundation**
**NOTICES**
Meetings:
Advisory Committee for Polar Programs, 18584

**Navy Department**
**NOTICES**
Hearings:
Environmental Impact Statement/Overseas Environmental Impact Statement; Southern California Range Complex, 18522–18523
Meetings:
Secretary of the Navy Advisory Panel, 18523

**Nuclear Regulatory Commission**
**NOTICES**
Draft Regulatory Guide; Availability, 18584
License Termination and Site Release for Unrestricted Use; Cabot Site, Reading, PA, 18584–18585

**Office of the Special Counsel**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18600–18601

**Patent and Trademark Office**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18519–18520

**Securities and Exchange Commission**
**NOTICES**
Applications:
Franklin California Tax-Free Income Fund, et al., 18585–18586
Meetings; Sunshine Act, 18586
Order of Suspension of Trading:
Alternative Energy Technology Center, Inc., 18587
Self-Regulatory Organizations; Proposed Rule Changes:
American Stock Exchange LLC, 18592–18596
Chicago Board Options Exchange, Inc., 18596–18598
Chicago Stock Exchange, Inc., 18598–18599
Philadelphia Stock Exchange, Inc., 18589–18592
The NASDAQ Stock Market LLC, 18587–18589

**Small Business Administration**
**NOTICES**
Disaster Declaration:
Arkansas, 18599
Iowa, 18599–18600
Liquidation and Debt Collection Activities; Fees for Liquidation Activities Performed By Authorized CDC Liquidators, 18600
Meetings:
Region II Buffalo District Advisory Council, 18600

**Special Counsel Office**
*See* Office of the Special Counsel

**State Department**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18601–18602

**Surface Transportation Board**
**NOTICES**
Quarterly Rail Cost Adjustment Factor, 18607
Temporary Trackage Rights Exemption:
Norfolk Southern Railway Co., 18607

**Thrift Supervision Office**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18608–18609

**Transportation Department**
*See* Federal Aviation Administration
*See* National Highway Traffic Safety Administration
*See* Surface Transportation Board

**Transportation Security Administration**
**NOTICES**
Transportation Worker Identification Credential (TWIC):
Enrollment Dates for the Ports of Ponce, PR and Laporte, TX, 18550–18551

**Treasury Department**
*See* Internal Revenue Service

*See* Thrift Supervision Office

**U.S.-China Economic and Security Review Commission**
**NOTICES**
Open Public Hearing:
April 24-25 2008, New Orleans, LA, 18609

**U.S. Citizenship and Immigration Services**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18551

**Veterans Employment and Training Service**
**NOTICES**
Veteran Employment Services Survey Proposed Collection; Correction, 18574

**Separate Parts In This Issue**

**Part II**
Justice Department, Antitrust Division, 18612–18674

**Part III**
Health and Human Services Department, Centers for Medicare & Medicaid Services, 18676–18700

**Reader Aids**

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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## CFR PARTS AFFECTED IN THIS ISSUE

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

**7 CFR**
1 ..... 18433

**14 CFR**
39 ..... 18433
71 (4 documents) ..... 18436, 18437, 18438, 18439

**Proposed Rules:**
39 ..... 18461

**21 CFR**
210 ..... 18440
211 ..... 18440
510 ..... 18441
520 ..... 18441
526 ..... 18441
558 ..... 18441

**26 CFR**
301 ..... 18442

**36 CFR**

**Proposed Rules:**
1280 ..... 18462

**40 CFR**

**Proposed Rules:**
52 ..... 18466

**42 CFR**

**Proposed Rules:**
431 ..... 18676
440 ..... 18676
441 ..... 18676

**47 CFR**
101 ..... 18443

**50 CFR**
648 ..... 18443
665 ..... 18450

**Proposed Rules:**
300 ..... 18473
635 ..... 18473
648 ..... 18483

# Rules and Regulations

Federal Register
Vol. 73, No. 66
Friday, April 4, 2008

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

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### 7 CFR Part 1

**[Docket No. AMS–L&RRS–08–0015]**

### Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Final rule.

**SUMMARY:** This amendment expands the scope and applicability of the Department's uniform rules of practice governing adjudicatory proceedings to include actions initiated under the Organic Foods Production Act of 1990.

**DATES:** *Effective Date:* April 4, 2008.

**FOR FURTHER INFORMATION CONTACT:** Christine M. Sarcone, Director, Legislative and Regulatory Review Staff, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2622–South, Washington, DC 20250–1417. Telephone: (202) 720–3203; Facsimile: (202) 690–3767.

**SUPPLEMENTARY INFORMATION:** The Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501–6522) (OFPA) authorizes enforcement actions against, among other things, any person found to be in violation of the OFPA or a regulation issued thereunder.

The Department's uniform rules of practice (7 CFR part 1, subpart H), which govern the conduct of adjudicatory proceedings under numerous statutes, have been in effect since February 1, 1977. Accordingly, to insure consistency and uniformity in the conduct of the Department's administrative proceedings, it has been determined that proceedings initiated under the OFPA should also be governed by these uniform procedures. This rule relates to internal agency management. Therefore, this rule is exempt from the provisions of Executive Orders 12866 and 12988. Moreover, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required for this rule, and it may be made effective less than 30 days after publication in the **Federal Register**. In addition, under 5 U.S.C. 804, this rule is not subject to congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* and thus is exempt from the provisions of that Act.

### Paperwork Reduction Act

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

### List of Subjects in 7 CFR Part 1

Administrative practice and procedure, Agriculture, Antitrust, Claims, Concessions, Cooperatives, Equal access to justice, Federal buildings and facilities, Freedom of Information, Lawyers, Privacy.

■ For the reasons set forth in the preamble, Title 7 subtitle A is amended as follows:

## PART 1—ADMINISTRATIVE REGULATIONS

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

**Authority:** 5 U.S.C. 301, unless otherwise noted.

■ 2. The authority citation for part 1, subpart H is revised to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 61, 87e, 228, 268, 499o, 608c(14), 1592, 1624(b), 2151, 2279e, 2621, 2714, 2908, 3812, 4610, 4815, 4910, 6009, 6107, 6207, 6307, 6411, 6519, 6520, 6808, 7107, 7734, 8313; 15 U.S.C. 1828; 16 U.S.C. 620d, 1540(f), 3373; 21 U.S.C. 104, 111, 117, 120, 122, 127, 134e, 134f, 135a, 154, 463(b), 621, 1043; 43 U.S.C. 1740; 7 CFR 2.35, 2.41.

■ 3. In § 1.131, paragraph (a), the following statutory reference is added in alphabetical order:

**§ 1.131 Scope and applicability of this subpart.**

(a) * * *

Organic Foods Production Act of 1990, sections 2119 and 2120 (7 U.S.C. 6519, 6520).

* * * * *

Dated: March 27, 2008.

**Edward T. Schafer,**

*Secretary of Agriculture.*

[FR Doc. E8–6764 Filed 4–3–08; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2008–0070; Directorate Identifier 2007–CE–098–AD; Amendment 39–15452; AD 2008–07–11]**

**RIN 2120–AA64**

### Airworthiness Directives; PILATUS AIRCRAFT LTD. Model PC–12, PC–12/45, and PC–12/47 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) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. This AD requires inserting changes into the airworthiness limitations of the FAA-approved maintenance program. We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective May 9, 2008.

**ADDRESSES:** You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, 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:** Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090.

**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 January 25, 2008 (73 FR 4497). That NPRM proposed to correct an unsafe condition for the specified products. The NPRM proposed to require incorporating new limitations into the Airworthiness Limitations section of the Pilatus PC–12 Airplane Maintenance Manual (AMM) 12–A/AMP–04. The revisions to the Airworthiness Limitations section of AMM 12–A/AMP–04 incorporate the following:

- Time between overhaul (TBO) for the pitch trim actuator is reduced from 6,000 hours TIS or 5 years, whichever occurs first, to 5,000 hours time-in-service (TIS) or 5 years, whichever occurs first;
- The life limit for the pitch trim actuator is increased from 10,000 hours TIS or 13,500 flights, whichever occurs first, to 20,000 hours TIS or 27,000 flights, whichever occurs first; and
- A life limit of 10,000 hours TIS is introduced for the pitch trim actuator attachment parts.

## Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

*Comment Issue No. 1: Unable To Comply With AD*

Scott R. Lania of Alpha Flying Inc./Atlas Aircraft Center, Inc. and Tim Kitzmann state that incorporating limitations and making pen and ink changes to the airworthiness limitations section of the FAA-approved maintenance manual are impractical and impossible.

The commenters state that each affected airplane does not have its own maintenance manual, which makes compliance with paragraph (f) of the NPRM implausible. They state that most maintenance manuals for Pilatus PC–12 airplanes are now on compact disk (CD), which makes the pen and ink changes required in paragraph (f)(2) of the NPRM impossible.

The commenters believe it would be easier to state the part numbers of the affected pitch trim actuators and their new TBO interval into the AD to address the unsafe condition.

We partially agree with the commenters. We agree that making the pen and ink changes to the CD version of the FAA-approved maintenance manual would be impossible. However, we do not agree that incorporating just the part numbers of the affected pitch trim actuators and their new TBO interval into the AD addresses the unsafe condition. That approach could cause confusion with the latest version of the airworthiness limitations section of the FAA-approved maintenance manual and would not follow the State of Design Authority's actions.

To address this issue, we will allow using the CD version of the FAA-approved maintenance manual that incorporates the November 20, 2007, version of chapter 4 and the corresponding version of chapter 5 as an option for complying with the AD.

In accordance with 14 CFR 21.50 and 23.1529, the holder of a design approval for which application was made after January 28, 1981, is required to include an Airworthiness Limitations section in their FAA-approved maintenance manual or maintenance program (Instructions for Continued Airworthiness). In this case, the manufacturer issued chapter 4 to Pilatus PC–12 AMM 12–A/AMP–04, which is the Airworthiness Limitations section, and it must be incorporated into the airplane maintenance manual or maintenance program. This AD incorporates the November 20, 2007, version of these limitations.

The only way for us to mandate a version of the airworthiness limitations section, other than what was in place at delivery of the airplane, is through rulemaking, e.g., AD.

We will change the final rule AD action to incorporate the changes mentioned above.

*Comment Issue No. 2: Change Compliance Time for TBO*

Scott R. Lania of Alpha Flying Inc./Atlas Aircraft Center, Inc. believes that the calendar time for the TBO interval is too early for low-time users. He suggests 8 to 10 years as a more realistic time for the 400- to 500-hour-a-year users. He believes this would be more in line with the high-time users.

We do not agree. We have no data that allows us to deviate from the compliance time decision of both the type certificate (TC) holder and the State of Design Authority. The TC holder did not provide a conversion for the low-time users; therefore, we are relying on the compliance time decision of the TC holder and State of Design Authority. Owners/operators may request an alternative method of compliance (AMOC) following the procedures in 14 CFR 39.19, and the AD. We will coordinate all requests with the TC holder and State of Design Authority.

We are not changing the final rule AD action based on this comment.

*Comment Issue No. 3: Request for Test Result Data*

Dan P. Johnson states that the reduction of the hourly limit for the TBO may be acceptable provided there is evidence supporting it. The proposed AD states: ''based on full-scale fatigue test, the life limit has been extended, but the TBO reduced.''

The commenter requests to see the actual test results that prove a 5-year calendar limit is warranted.

The commenter notes that the current chapter 4 component entry for this actuator has no calendar limitation. These actuators are overhauled in the United States by Derco Repair Services, Inc. in Milwaukee, Wisconsin. The commenter states that he contacted this repair station last year for a quote to overhaul one of these and was quoted a price of around $4,500. The commenter states that he was also told that, due to a proprietary agreement with Pilatus, they would not accept direct requests for overhaul and only Pilatus could provide service. The commenter states that this is a common practice of Pilatus to control U.S. parts distribution.

The commenter states that he understands the FAA does not get involved with costs incurred by operators. He also states that he understands the purpose of an AD is to detect and correct unsafe conditions and prevent them from happening in the future. The commenter believes that the FAA is assisting the TC holder in the ''gouging of American operators by agreeing to an unsubstantiated calendar limit.''

The commenter believes that the hourly TBO reduction is sufficient for 14 CFR part 91 operators.

We issued the NPRM based on full-scale fatigue tests conducted by the TC holder. The actual data is held by Pilatus, the European Aviation Safety Agency (EASA), and the Federal Office of Civil Aviation (FOCA). We have no data to show that the State of Design Authority's determination of the life limits specified in the NPRM is not valid.

We evaluated the State of Design Authority's information and determined that AD action was necessary in the United States to address an unsafe condition that is likely to exist or develop on airplanes of the same type design that are type certificated for operation in the United States. The life limit of the component is being added to the Airworthiness Limitations section along with the TBO interval in order to

maintain the safe operation of this component.

We are not changing the final rule AD action based on this comment.

*Comment Issue No. 4: AD Unnecessary*

Tim Kitzmann questions why the AD is necessary if these new limitations are FAA-approved. The commenter points out that 14 CFR 91.403(c) requires compliance with airworthiness limitations issued by the TC holder.

The commenter believes that the AD is unnecessary since the new limitations are part of chapter 4.

We do not agree with the commenter. While 14 CFR 91.403(c) requires compliance with FAA-approved limitations issued by the TC holder, the FAA's regulations do not require future incorporations of limitation section revisions, unless additional rulemaking action is taken, e.g., AD action. By taking AD action, we can mandate change to the airworthiness limitations section of an FAA-approved maintenance program for airplanes operating in both 14 CFR part 91 and part 135 operations. If these new limitations are not mandated, the pitch trim actuator and the pitch trim actuator components could fail.

We are not changing the final rule AD action based on these comments.

*Comment Issue No. 5: Update Reference to the AMM*

Pilatus Aircraft Ltd. states that the reference to Pilatus PC–12 AMM, Chapter 4 is not correct. Due to the implementation of a new software publication system, Pilatus requests for the AMM reference to be changed to Report No. 02049, issue 1, revision 0, dated November 20, 2007.

We partially agree with the commenter. In order to avoid confusion, we will incorporate the date of the new document. Based on the documents we have, we cannot change the way Pilatus PC–12 AMM, Chapter 4 is referenced in this AD. However, to accommodate Pilatus' new software publication system, we will add a parenthetical to the Pilatus PC–12 AMM, Chapter 4 reference to include Report No. 02049, issue 1, revision 0.

We will change the final rule AD action based on this comment.

## Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

## 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 FAA policies. Any such differences are highlighted in a NOTE within the AD.

## Costs of Compliance

We estimate that this AD will affect about 500 products of U.S. registry. We also estimate that it will take about .5 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $20,000, or $40 per product.

In addition, we estimate that any necessary follow-on actions (the replacements required by the limitations changes) will take about 3.5 work-hours and require parts costing $11,960, for a cost of $12,240 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 DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

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

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

## Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility 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 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, Safety.

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2008–07–11 Pilatus Aircraft Ltd.:** Amendment 39–15452; Docket No. FAA–2008–0070; Directorate Identifier 2007–CE–098–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective May 9, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Models PC–12, PC–12/45, and PC–12/47 airplanes, all serial numbers, certificated in any category.

**Subject**

(d) Air Transport Association of America (ATA) Code 27: Flight Controls.

**Reason**

(e) 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. We are issuing this AD to mandate new life limits for the pitch trim actuator and pitch trim actuator attachment parts. If these new limitations are not mandated, the pitch trim actuator and the pitch trim actuator components could fail. This failure could lead to an unsafe flying configuration.

**Actions and Compliance**

**Note 1:** Pilatus has implemented a new software publication system. During the implementation of this new system, the airplane maintenance manual revision number was reset to 0. For the purposes of this AD, the date of issue takes prescedence over the revision level.

(f) Unless already done, do the following within the next 30 days after May 9, 2008 (the effective date of this AD).

(1) Insert unclassified document 12–A/AMP–04, Structural, Component and Miscellaneous—Airworthiness Limitations, 12–A–04–00–00–00A–000A–A, dated October 26, 2007 (Pilatus PC–12 Airplane Maintenance Manual, Chapter 4, Report No. 02049, Issue 1, Revision 0, dated November 20, 2007), into the airworthiness limitations section of the FAA-approved maintenance program (e.g., maintenance manual) or use the CD version that incorporates the November 20, 2007, version of chapter 4 and the corresponding version of chapter 5. You may use any future amendment to this Airworthiness Limitations section provided it does not change the inspection intervals, requirements, or the life limits for the pitch trim actuator and pitch trim actuator attachment parts of the document referenced above. The owner/operator holding at least a private pilot certificate as authorized by 14 CFR 43.7 may do this action. Make an entry in the aircraft records showing compliance with this portion of the AD following 14 CFR 43.9.

(2) In order to avoid confusion with the new pitch trim actuator limitations now contained in chapter 4 (previously contained in chapter 5), make pen and ink changes in chapter 5 and line through references to limitations for the pitch trim actuator. You do not have to make these pen and ink changes if you are using the CD version that incorporates the November 20, 2007, version of chapter 4 and the corresponding version of chapter 5.

**FAA AD Differences**

**Note 2:** 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, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090. 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 (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Issued in Kansas City, Missouri, on March 27, 2008.

**John Colomy,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8–6958 Filed 4–3–08; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2007–0343; Airspace Docket No. 07–AAL–21]**

## Revision of Class E Airspace; Anvik, AK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action revises Class E airspace at Anvik, AK to provide adequate controlled airspace to contain aircraft executing Standard Instrument Approach Procedures (SIAPs). Two new Standard Instrument Approach Procedures (SIAPs) and a textual departure procedure (DP) are being developed for the Anvik Airport. Additionally, one SIAP is being amended. This action revises existing Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Anvik Airport, Anvik, AK.

**EFFECTIVE DATE:** 0901 UTC, June 5, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

**SUPPLEMENTARY INFORMATION:**

### History

On Friday, February 1, 2008, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace upward from 700 ft. above the surface and from 1,200 ft. above the surface at Anvik, AK (73 FR 6058). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing SIAPs for the Anvik Airport. Class E controlled airspace extending upward from 700 ft. above the surface and from 1,200 ft. above the surface in the Anvik Airport area is revised by this action.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

### The Rule

This amendment to 14 CFR part 71 revises Class E airspace at the Anvik Airport, Alaska. This Class E airspace is revised to accommodate aircraft executing new and amended SIAPs, and a new DP, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for

Instrument Flight Rules (IFR) operations at the Anvik Airport, Anvik, Alaska.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Anvik Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

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

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; 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 Federal Aviation Administration Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, is amended as follows:

* * * * *

*Paragraph 6005 Class E Airspace Extending Upward from 700 feet or More Above the Surface of the Earth.*

* * * * *

**AAL AK E5 Anvik, AK [Revised]**

Anvik, Anvik Airport, AK
(Lat. 62°38′48″ N., long. 160°11′26″ W.)

That airspace extending upward from 700 feet above the surface within an 8.0-mile radius of the Anvik Airport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Anvik Airport.

* * * * *

Issued in Anchorage, AK, on March 24, 2008.

**Anthony M. Wylie,**

*Manager, Alaska Flight Services Information Area Group.*

[FR Doc. E8–6933 Filed 4–3–08; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2007–0342; Airspace Docket No. 07–AAL–20]**

## Revision of Class E Airspace; Bettles, AK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action revises Class E airspace at Bettles, AK to provide adequate controlled airspace to contain aircraft executing Standard Instrument Approach Procedures (SIAPs). Two Standard Instrument Approach Procedures (SIAPs) are being developed for the Bettles Airport. Additionally, two SIAPs and a textual departure procedure (DP) are being amended. This action revises existing Class E airspace upward from the surface and from 700 feet (ft.) and 1,200 ft. above the surface at the Bettles Airport, Bettles, AK.

**EFFECTIVE DATE:** 0901 UTC, June 5, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

**SUPPLEMENTARY INFORMATION:**

### History

On Friday, February 1, 2008, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace upward from the surface and from 700 ft. above the surface and from 1,200 ft. above the surface at Bettles, AK (73 FR 6060). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing SIAPs for the Bettles Airport. Class E controlled airspace extending upward from the surface and from 700 ft. above the surface and from 1,200 ft. above the surface, in the Bettles Airport area is revised by this action.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as surface areas are published in paragraph 6002 of FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

### The Rule

This amendment to 14 CFR part 71 revises Class E airspace at the Bettles Airport, Alaska. This Class E airspace is revised to accommodate aircraft executing new and amended DPs and SIAPs, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for

Instrument Flight Rules (IFR) operations at the Bettles Airport, Bettles, Alaska.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Bettles Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

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

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; 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 Federal Aviation Administration Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, is amended as follows:

* * * * *

*Paragraph 6002 Class E Airspace Designated as Surface Areas.*

* * * * *

**AAL AK E2 Bettles, AK [Revised]**

Bettles Airport, AK
(Lat. 66°54′50″ N., long. 151°31′44″ W.)

Within a 5.7-mile radius of the Bettles Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Supplement Alaska Airport/Facility Directory.

*Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AAL AK E5 Bettles, AK [Revised]**

Bettles Airport, AK
(Lat. 66°54′50″ N., long. 151°31′44″ W.)

That airspace extending upward from 700 feet above the surface within an 8.2-mile radius of the Bettles Airport, and within 3.9 miles either side of the 212° bearing from the Bettles Airport, extending from the 8.2-mile radius to 11.3 miles southwest of the Bettles Airport; and that airspace extending upward from 1,200 feet above the surface within a 72-mile radius of the Bettles Airport.

* * * * *

Issued in Anchorage, AK, on March 24, 2008.

**Anthony M. Wylie,**

*Manager, Alaska Flight Services Information Area Group.*

[FR Doc. E8–6932 Filed 4–3–08; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2007–28161; Airspace Docket No. 07–ASO–6]**

**RIN 2120–AA66**

## Establishment of Low Altitude Area Navigation Route T–209; GA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes a low altitude Global Positioning System (GPS)/Global Navigation Satellite System (GNSS) area navigation route, designated T–209, in the vicinity of Augusta, GA. This route allows for more effective utilization of airspace and enhances the management of aircraft operations in the vicinity of Augusta, GA.

**EFFECTIVE DATE:** 0901 UTC, June 5, 2008. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### Background

On May 22, 2007, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish T–209 in the vicinity of Augusta, GA (72 FR 28630). The purpose of the route is to provide a more direct route for north and southbound traffic west of Augusta, GA, and establish a published route to assist pilots navigating around the Bulldog A Military Operations Area (MOA). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. Comments were received from the Aircraft Owners and Pilots Association (AOPA) and the U.S. Air Force (USAF).

AOPA wrote in support of the proposal. The USAF expressed concerns about the impact of the route on current use of the Bulldog B Military Operations Area (MOA), and the potential impact of the route on a special use airspace proposal previously submitted to, and now under review by, the FAA. Currently, there are two MOAs situated in the vicinity of the airspace through which T–209 passes. These existing MOAs are the Bulldog A MOA, which is located to the west of the T–209 airspace and extends from 500 feet above ground level up to but not including 10,000 feet MSL; and the Bulldog B MOA, which extends from 10,000 feet MSL up to but not including 18,000 feet MSL. The Bulldog B MOA overlies Bulldog A and it also extends beyond the Bulldog A boundaries on the east and south sides. The FAA has determined that the new route will not disrupt current military flight training operations in the Bulldog MOAs. T–209

passes through the airspace to the east of the Bulldog A MOA boundary and beneath the Bulldog B MOA. Currently, when the Bulldog A and B MOAs are used in conjunction with each other, ATC will clear military aircraft using the MOAs to operate at or above 11,000 feet MSL in that portion of Bulldog B, which extends beyond the lateral confines of Bulldog A. In those cases, T–209 will only be utilized at and below 10,000 feet MSL; therefore, the new route will not have any impact on the current Bulldog A or B MOA operations. It is estimated that 13,000 to 15,000 IFR general aviation overflights per year are vectored by ATC through the existing corridor that will encompass T–209. The establishment of T–209 will not significantly change this traffic volume.

The USAF also expressed concern about the possible impact of the new route on a proposal to modify the Bulldog MOAs that it previously submitted to the FAA. That proposal is still under review by the FAA. It should be noted that the FAA has not made a determination on the USAF's MOA proposal at this time. However, to facilitate real-time use of the Bulldog MOAs, and ensure separation of T–209 from MOA airspace, the FAA has moved the NASDE waypoint 4.2 NM to the east of the position proposed in the NPRM. The modified NASDE position also results in a straighter T–209 route segment between the EHEJO fix and the YASLO waypoint.

In this rule, the geographic coordinates for two points in the T–209 description differ slightly from those proposed in the NPRM. First, the proposed latitude/longitude position for the EHEJO, GA, fix contained a minor error amounting to approximately two seconds of latitude and one second of longitude. The correct position for the EHEJO fix is lat. 32°23′28″ N., long. 82°05′11″ W. Second, the NASDE, GA, waypoint is moved 4.2 NM to the east of the original proposed position, as discussed above. The revised position for NASDE is lat. 32°33′16″ N., long. 82°00′50″ W. In addition, this rule corrects the spelling of the JAMTA waypoint, which was incorrectly stated as JAMITA in the NPRM.

With the exception of above mentioned changes, this amendment is the same as that proposed in the NPRM.

## The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing area navigation route T–209 in the vicinity of Augusta, GA. The new route extends between the Colliers, SC, very high frequency omnidirectional range/tactical air navigation (VORTAC) aid and the EHEJO, GA, navigation fix. T–209 provides a more direct route for northbound and southbound traffic and establishes a published route to assist aircraft navigating around the Bulldog A MOA.

Area navigation routes are published in paragraph 6011 of FAA Order 7400.9R, signed August 15, 2007 and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The area navigation route listed in this document will be published subsequently in the Order.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes area navigation route T–209 in the vicinity of Augusta, GA.

## Environmental Review

The FAA has reviewed the above referenced action and determined that it is categorically excluded from further environmental documentation according to FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, in accordance with paragraphs 311a. Additionally, the implementation of this action will not result in any extraordinary circumstances in accordance with FAA Order 1050.1E paragraph 304.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## The Amendment

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

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

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

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

### § 71.1 [Amended]

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

*Paragraph 6011 Contiguous United States Area Navigation Routes.*

* * * * *

**T–209 EHEJO, GA to Colliers, SC [New]**

EHEJO, GA Fix (lat. 32°23′28″ N., long. 82°05′11″ W.)
NASDE, GA WP (lat. 32°33′16″ N., long. 82°00′50″ W.)
YASLU, GA WP (lat. 32°49′42″ N., long. 81°56′52″ W.)
JAMTA, GA WP (lat. 33°06′41″ N., long. 82°00′27″ W.)
Colliers, SC VORTAC (lat. 33°42′26″ N., long. 82°09′43″ W.)

* * * * *

Issued in Washington, DC, on March 25, 2008.

**Paul Gallant,**

*Acting Manager, Airspace and Rules Group.*

[FR Doc. E8–6922 Filed 4–3–08; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2007–29008; Airspace Docket No. 07–AAL–11]**

## Revision of Class E Airspace; New Stuyahok, AK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action revises Class E airspace at New Stuyahok, AK to provide adequate controlled airspace to

contain aircraft executing Standard Instrument Approach Procedures (SIAPs). Two new Standard Instrument Approach Procedures (SIAPs) are being developed for the New Stuyahok Airport. This action revises existing Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at New Stuyahok Airport, New Stuyahok, AK.

**EFFECTIVE DATE:** 0901 UTC, June 5, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

**SUPPLEMENTARY INFORMATION:**

## History

On Friday, February 1, 2008, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace upward from 700 ft. above the surface and from 1,200 ft. above the surface at New Stuyahok, AK (73 FR 6057). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing SIAPs for the New Stuyahok Airport. The Notice of Proposed Rulemaking contained airport location data, which has since been updated. The revised airport location coordinates are listed in this rule. Class E controlled airspace extending upward from 700 ft. above the surface and from 1,200 ft. above the surface in the New Stuyahok Airport area is revised by this action.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

## The Rule

This amendment to 14 CFR part 71 revises Class E airspace at the New Stuyahok Airport, Alaska. This Class E airspace is revised to accommodate aircraft executing new SIAPs, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at the New Stuyahok Airport, New Stuyahok, Alaska.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the New Stuyahok Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## Adoption of the Amendment

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

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; 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 Federal Aviation Administration Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, is amended as follows:

* * * * *

*Paragraph 6005 Class E Airspace Extending Upward from 700 feet or More Above the Surface of the Earth.*

* * * * *

**AAL AK E5 New Stuyahok, AK [Revised]**

New Stuyahok, New Stuyahok Airport, AK (Lat. 59°27′06″ N., long. 157°22′23″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the New Stuyahok Airport; and that airspace extending upward from 1,200 feet above the surface within a 71-mile radius of the New Stuyahok Airport.

* * * * *

Issued in Anchorage, AK, on March 24, 2008.

**Anthony M. Wylie,**

*Manager, Alaska Flight Services Information Area Group.*

[FR Doc. E8–6921 Filed 4–3–08; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Parts 210 and 211

**[Docket No. FDA–2008–N–0179] (formerly Docket No. 2007N–0280)**

## Amendment to the Current Good Manufacturing Practice Regulations for Finished Pharmaceuticals; Withdrawal

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Direct final rule; withdrawal.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing a

direct final rule that published in the **Federal Register** of December 4, 2007 (72 FR 68064), to amend certain regulations as the first phase of an incremental approach to modernize or clarify some of the current good manufacturing practice (CGMP) regulations for finished pharmaceuticals, as well as harmonize some of the CGMP requirements with those of other foreign regulators and other FDA regulations. The comment period closed February 19, 2008. FDA is withdrawing the direct final rule because the agency received significant adverse comments. FDA will consider the comments received under our usual procedures for notice and comment in connection with the notice of proposed rulemaking that was published in the **Federal Register** of December 4, 2007, as a companion to the direct final rule (72 FR 68113).

**DATES:** The direct final rule published at 72 FR 68064 on December 4, 2007, is withdrawn as of April 4, 2008.

**FOR FURTHER INFORMATION CONTACT:**
Mary Malarkey, Center for Biologics Evaluation and Research (HFM–600), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6190, or
Dennis Bensley, Center for Veterinary Medicine (HFV–140), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8268, or
Brian Hasselbalch, Center for Drug Evaluation and Research (HFD–320), Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–3279.

Authority: Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, the direct final rule published on December 4, 2007 (72 FR 68064) is withdrawn.

Dated: March 24, 2008.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E8–7107 Filed 4–3–08; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 510, 520, 526, and 558

### Animal Drugs, Feeds, and Related Products; Withdrawal of Approval of NADAs; Technical Amendment

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations by removing those portions that reflect approval of seven new animal drug applications (NADAs) because FDA is withdrawing approval of the NADAs.

**DATES:** This rule is effective April 4, 2008.

**FOR FURTHER INFORMATION CONTACT:** Pamela K. Esposito, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9067; e-mail: *pamela.esposito@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** The following sponsors have requested that FDA withdraw approval of the seven NADAs listed below because the products are no longer manufactured or marketed:

| Sponsor | NADA Number Product (Drug) | 21 CFR Cite Affected (Sponsor Drug Labeler Code) |
|---|---|---|
| Eon Labs Manufacturing, Inc., 227–15 North Conduit Ave., Laurelton, NY 11413 | NADA 65–063, Tetracycline capsules | 520.2345a (000185) |
| | NADA 65–345, Chloramphenicol capsules | 520.390b (000185) |
| G.C. Hanford Manufacturing Co., P.O. Box 1017, Syracuse, NY 13201 | NADA 65–465, AQUA-MAST (penicillin G procaine) | 526.1696a (010515) |
| International Nutrition, Inc., 7706 "I" Plaza, Omaha, NE 68127 | NADA 95–551, TYLAN 5 Premix (tylosin phosphate) | 558.625 (043733) |
| | NADA 109–688, HYGROMIX 2.4 Premix (hygromycin B) | 558.274 (043733) |
| | NADA 109–816, TYLAN 10 SULFA-G Premix (tylosin phosphate and sulfamethazine) | 558.630 (043733) |
| Pfizer, Inc., 235 East 42d St., New York, NY 10017 | NADA 103–758, TERAMIX–10 Premix (oxytetracycline) | Not codified |

Following the withdrawal of approval of these NADAs, Eon Labs Manufacturing, Inc., is no longer sponsor of an approved application. Therefore, 21 CFR 510.600(c) is amended to remove entries for this sponsor.

As provided below, the animal drug regulations are amended to reflect the withdrawal of approvals. The regulations for penicillin G procaine

intramammary dosage forms (21 CFR 526.1696a) are also amended to correct several errors and to reflect a current format.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects**

*21 CFR Part 510*

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

*21 CFR Parts 520 and 526*

Animal drugs.

*21 CFR Part 558*

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 526, and 558 are amended as follows:

## PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

### § 510.600 [Amended]

■ 2. In § 510.600, in the table in paragraph (c)(1), remove the entry for ''Eon Labs Manufacturing, Inc.''; and in the table in paragraph (c)(2) remove the entry for ''000185''.

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 520 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

### § 520.390b [Amended]

■ 4. In § 520.390b, in paragraph (b)(1), remove '', 000185,''.

### § 520.2345a [Amended]

■ 5. In § 520.2345a, remove paragraph (b)(3).

## PART 526—INTRAMAMMARY DOSAGE FORMS

■ 6. The authority citation for 21 CFR part 526 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

■ 7. Revise § 526.1696a to read as follows:

### § 526.1696a Penicillin G procaine.

(a) *Specifications*. Each 10-milliliter single-dose syringe contains penicillin G procaine equivalent to 100,000 units of penicillin G.

(b) *Related tolerances*. See § 556.510 of this chapter.

(c) *Sponsors*. See Nos. 010515 and 050604 in § 510.600(c) of this chapter.

(d) *Conditions of use in lactating cows*—(1) *Amount*. Infuse one 10-milliliter dose into each infected quarter. Treatment may be repeated at 12-hour intervals for not more than three doses, as indicated by clinical response.

(2) *Indications for use*. For the treatment of mastitis caused by *Streptococcus agalactiae*, *S. dysgalactiae*, and *S. uberus* in lactating cows.

(3) *Limitations*. Milk that has been taken from animals during treatment and for 60 hours after the latest treatment must not be used for food. Animals must not be slaughtered for food during treatment or within 3 days after the latest treatment.

(e) *Conditions of use in dry cows*—(1) *Amount*. Infuse one 10-milliliter dose into each infected quarter at time of drying-off.

(2) *Indications of use*. For the treatment of mastitis caused by *Streptococcus agalactiae* in dry cows.

(3) *Limitations*. Discard all milk for 72 hours (6 milkings) following calving, or later as indicated by the marketable quality of the milk. Animals must not be slaughtered for food within 14 days postinfusion.

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 8. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** 21 U.S.C. 360b, 371.

### § 558.274 [Amended]

■ 9. In § 558.274, amend paragraph (a)(2) by removing ''Nos. 043733 and'' and adding in its place ''No.''.

### § 558.625 [Amended]

■ 10. In § 558.625, remove and reserve paragraph (b)(3).

### § 558.630 [Amended]

■ 11. In § 558.630, amend paragraph (b)(10) by removing ''043733,''.

Dated: March 26, 2008.

**Bernadette Dunham,**

*Director, Center for Veterinary Medicine.*

[FR Doc. E8–7103 Filed 4–3–08; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 301

**[TD 8697]**

**RIN 1545–AT91**

## Simplification of Entity Classification Rules; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains a correction to final regulations (TD 8697), that were published in the **Federal Register** on Wednesday, December 18, 1996 (61 FR 66584). The final regulations classify certain business organizations under an elective regime.

**DATES:** This correction is effective on April 4, 2008 and is applicable on January 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Stephen J. Hawes, (202) 622–3860 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations (TD 8697) that is the subject of this correction is under section 7701 of the Internal Revenue Code.

**Need for Correction**

As published, TD 8697 contains an error that may prove to be misleading and is in need of clarification.

**List of Subjects 26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

**Correction of Publication**

■ Accordingly, 26 CFR part 301 is corrected by making the following correcting amendment:

## PART 301—PROCEDURE AND ADMINISTATION

■ **Paragraph 1**. The authority citation for part 301 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

■ **Par. 2**. Section 301.7701–2(b)(8)(i) is amended by revising the entry for ''Romania, Societe pe Actiuni'' to read as follows:

### § 301.7701–2 Business entities; definitions.

* * * * *

(b) * * *

(8) * * *

(i) * * *

Romania, Societate pe Actiuni

* * * * *

**Cynthia E. Grigsby,**

*Senior Federal Register Liaison Officer, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. E8–6734 Filed 4–3–08; 8:45 am]

BILLING CODE 4830–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 101

### Fixed Microwave Services

*CFR Correction*

In Title 47 of the Code of Federal Regulations, Part 80 to End, revised as of October 1, 2007, in § 101.113, on page 660, the following two entries are reinstated in numerical order in the table in paragraph (a):

**§ 101.113 Transmitter power limitations.**

(a) * * *

| Frequency band (MHz) | Maximum allowable EIRP [1,2] | |
|---|---|---|
| | Fixed [1,2] (dBW) | Mobile (dBW) |
| * * * | * | * |
| 71,000–76,000[13] ... | +55 | +55 |
| 81,000–86,000[13] ... | +55 | +55 |
| * * * | * | * |

[1] Per polarization.

[2] For multiple address operations, see § 101.147. Remote alarm units that are part of a multiple address central station projection system are authorized a maximum of 2 watts.

* * * * *

[13] The maximum transmitter power is limited to 3 watts (5 dBW) unless a proportional reduction in maximum authorized EIRP is required under § 101.115. The maximum transmitter power spectral density is limited to 150 mW per 100 MHz.

* * * * *

[FR Doc. E8–7008 Filed 4–3–08; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 070717340–8451–02]**

**RIN 0648–AV40**

### Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Specifications and Management Measures

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

**ACTION:** Final rule.

**SUMMARY:** This action implements 2008 specifications and management measures for Atlantic mackerel, squid, and butterfish (MSB) and modifies existing management measures. Specifically, it clarifies gear requirements for the *Loligo* squid fishery, standardizes procedures for closing the Atlantic mackerel (mackerel) and butterfish fisheries, modifies incidental possession limits for mackerel and butterfish, and establishes a butterfish possession limit. These specifications and management measures promote the utilization and conservation of the MSB resource.

**DATES:** Effective May 5, 2008.

**ADDRESSES:** Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The EA/RIR/IRFA is accessible via the Internet at *http://www.nero.nmfs.gov*. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of the preamble of this rule. Copies of the FRFA and the Small Entity Compliance Guide are available from the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298, and are also available via the Internet at *http://www.nero.nmfs.gov*.

**FOR FURTHER INFORMATION CONTACT:** Carrie Nordeen, Fishery Policy Analyst, 978–281–9272, fax 978–281–9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

Regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) appear at 50 CFR part 648, subpart B. Regulations governing foreign fishing appear at 50 CFR part 600, subpart F. These regulations, at § 648.21 and § 600.516(c), require that NMFS, based on the maximum optimum yield (Max OY) of each fishery as established by the regulations, annually publish a rule specifying the amounts of the initial optimum yield (IOY), allowable biological catch (ABC), domestic annual harvest (DAH), and domestic annual processing (DAP), as well as, where applicable, the amounts for total allowable level of foreign fishing (TALFF) and joint venture processing (JVP) for the affected species managed under the FMP. In addition, these regulations allow *Loligo* squid specifications to be specified for up to 3 years, subject to annual review. The regulations found in § 648.21 also specify that IOY for squid is equal to the combination of research quota (RQ) and DAH, with no TALFF specified for squid. For butterfish, the regulations specify that a butterfish bycatch TALFF will be specified only if TALFF is specified for mackerel.

The Council adopted 2008 MSB specifications and management measures at its June 2007 meeting and submitted them to NMFS for review and approval. Initial submission was on August 1, 2007, and final submission was on November 9, 2007. A proposed rule for 2008 MSB specifications and management measures was published on December 28, 2007 (72 FR 73749), and a notice to re-open the public comment period on the proposed rule was published on January 29, 2008 (73 FR 5153). The public comment period for the proposed rule ended on February 5, 2008. Details concerning the Council's development of these measures were presented in the preamble of the proposed rule and are not repeated here.

**Disapproval of Increased Incidental *Loligo* Squid Possession Limit for Illex Squid Vessels**

The issue of incidental catch of *Loligo* squid in the *Illex* squid fishery was identified several years ago when large amounts of *Loligo* squid discards were reported in vessel trip reports by *Illex* squid vessels during closures of the directed *Loligo* squid fishery in the summer and fall of 2000. Analyses developed for Amendment 9 to the FMP indicated that the *Illex* squid fishery occurs primarily during June-November

in offshore waters and that both squid species can co-occur during September-November on the *Illex* squid fishery grounds, when the *Loligo* squid begin to move offshore. Because of the seasonal co-occurrence of the two squid species, members of the directed *Illex* squid fishery testified at Council meetings that the 2,500-lb (1.13-mt) incidental *Loligo* squid possession limit during closures of the *Loligo* squid fishery creates compliance problems for the *Illex* squid fishery because vessels catch more than 2,500 lb (1.13 mt) of *Loligo* squid when the species mix. In an effort to reduce regulatory discarding and allow more accurate quantification of the removals of *Loligo* squid taken in the directed *Illex* squid fishery, the Council recommended increasing the incidental *Loligo* squid possession limit for vessels engaged in the directed *Illex* squid fishery during *Loligo* squid fishery closures. Specifically, during closures of the *Loligo* squid fishery in August-October, *Illex* squid moratorium vessels fishing seaward of the small mesh exemption line (approximately the 50-fm (91-m) depth contour) would be permitted to possess and land up to 5,000 lb (2.27 mt) of *Loligo* squid, provided they possess a minimum of 10,000 lb (4.54 mt) of *Illex* squid on board.

This measure is similar to the measure proposed by the Council in the 2007 MSB specifications, but not implemented due to concerns about NMFS's ability to administer the measure effectively. The small mesh exemption line, which approximates the 50-fm (91-m) depth contour, was implemented for the *Illex* squid fishery because *Illex* squid are not generally available to the fishery shoreward of this line. The *Illex* squid fishery is exempt from the 1⅞-inches (48-mm) minimum mesh requirement for the *Loligo* squid fishery in the exemption area. However, *Loligo* squid are widely distributed shoreward of this line, which would make it difficult to determine if the *Loligo* squid is truly incidentally caught within the *Illex* squid exemption area. Currently, there is no mechanism to determine if *Illex* squid moratorium vessels fish for *Loligo* squid shoreward of the small mesh exemption line. Tools to collect spatial effort information on the *Illex* squid fleet were discussed by the Council, but implementation of those tools would require an FMP amendment or framework adjustment. Therefore, for 2008, the incidental *Loligo* squid possession limit for *Illex* squid moratorium vessels, during closures of the *Loligo* squid fishery, will remain at 2,500 lb (1.13 mt) per trip per day.

**Final MSB Specifications and Management Measures for the 2008 Fishing Year**

This action implements the following MSB specifications and management measures for the 2008 fishing year, which are described in detail below.

TABLE 1.—FINAL SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR 2008 FISHING YEAR

| Specifications | *Loligo* | *Illex* | Mackerel | Butterfish |
|---|---|---|---|---|
| Max OY | 26,000 | 24,000 | N/A | 12,175 |
| ABC | 17,000 | 24,000 | 156,000 | 1,500 |
| IOY | [1] 16,977 | 24,000 | [2] 115,000 | 500 |
| DAH | 16,977 | 24,000 | [3] 115,000 | 500 |
| DAP | 16,977 | 24,000 | 100,000 | 500 |
| JVP | 0 | 0 | 0 | 0 |
| TALFF | 0 | 0 | 0 | 0 |

[1] Excludes 23 mt for Research Quota (RQ).
[2] IOY may be increased during the year, but the total ABC will not exceed 156,000 mt.
[3] Includes a 15,000 mt catch of Atlantic mackerel by the recreational fishery.

**Atlantic Mackerel**

This action specifies the mackerel ABC at 156,000 mt, based on the formula ABC = T − C. T is the yield (211,000 mt) associated with a fishing mortality rate (F) that is equal to target F (F = 0.12); C is the estimated catch of mackerel in Canadian waters (52,000 mt) for the upcoming fishing year. Thus, 211,000 mt minus 52,000 mt results in the 2008 mackerel ABC of 156,000 mt. This action also specifies the mackerel IOY at 115,000 mt, a level that can be fully harvested by the domestic fleet, thereby precluding the specification of TALFF, while allowing the U.S. mackerel industry to expand. Given the trends in increasing mackerel landings, NMFS believes that it is reasonable to assume that, in 2008, the commercial fishery will harvest 100,000 mt of mackerel. Therefore, this action specifies the mackerel DAH at 115,000 mt, which is the commercial harvest plus the 15,000 mt anticipated to be harvested by the recreational fishery. Because IOY = DAH, this specification is consistent with the Council's recommendation that the level of IOY should not provide for TALFF.

As recommended by the Council, this action specifies the mackerel DAP at 100,000 mt and the mackerel JVP at zero. In previous years, the Council recommended a JVP greater than zero because it believed U.S. processors lacked the capability to process the total amount of mackerel that U.S. harvesters could land. However, for the past several years, the Council has recommended zero JVP because the surplus between DAH and DAP has been declining as U.S. shore-based processing capacity for mackerel has expanded. The Council also heard from the industry that the availability of mackerel to the fishery, rather than processing capacity, has curtailed catch in recent years. Based on this information, the Council concluded, and NMFS concurs, that processing capacity is no longer a limiting factor relative to domestic production of mackerel. Consequently, if U.S. harvesters land mackerel in excess of 100,000 mt, should the IOY be adjusted upward, U.S. processors have the capacity and intent to process it.

**Closure of the Mackerel Fishery**

Regulations at § 648.22(a)(1) specify that NMFS shall close the directed mackerel fishery when the Regional Administrator projects that 80 percent of the mackerel DAH is landed, if such a closure is necessary to prevent the DAH from being exceeded. To facilitate achieving the mackerel DAH and consistent with the Council's recommendation, this action specifies that NMFS will close the mackerel fishery when 90 percent of the mackerel DAH is projected to be landed in 2008.

**Mackerel Incidental Possession Limit**

Regulations at § 648.22(c) specify that, during closures of the mackerel fishery,

the incidental possession limit for mackerel is 10 percent, by weight, of the total amount of fish on board. In general, possession limits that are a percent of the total catch on board are difficult to estimate and enforce. This action modifies the incidental possession limit for mackerel such that: It is easier to estimate and enforce, and it is more similar to incidental possession limits for squid and butterfish; it is low enough to ensure that the mackerel ABC would not be exceeded; it is high enough to minimize regulatory discarding of mackerel in fisheries where mackerel is taken incidentally, but not so high as to encourage directed fishing; and it is high enough to allow small-scale fisheries to continue after the directed fishery is closed. Consistent with these factors and the Council's recommendation, this action specifies the mackerel incidental possession limit at 20,000 lb (4.54 mt).

**Inseason Adjustment of the Mackerel IOY**

Regulations at § 648.21(e) provide that specifications may be adjusted inseason during the fishing year by the Regional Administrator, in consultation with the Council, by publishing a notice in the **Federal Register** and providing a 30-day public comment period. At the June 2007 Council meeting, in response to recent growth in the domestic harvesting and processing sectors of the mackerel fishery, both the mackerel industry and the Council voiced interest in increasing the 2008 mackerel IOY if landings approach 115,000 mt during the most active part of the fishing year (January–April). However, the mackerel fishing season is short and it would be difficult to implement a separate inseason action during the fishing season. To facilitate a timely inseason adjustment to the mackerel IOY, if necessary, public comment was solicited as part of the 2008 MSB specifications, and this action implements a protocol for an inseason adjustment in 2008. The protocol specifies that, if using landings projections and all other available information, the Regional Administrator determines that 70 percent of the Atlantic mackerel IOY will be landed during the 2008 fishing year, the Regional Administrator will make available additional quota for a total IOY of 156,000 mt of Atlantic mackerel for harvest during 2008. NMFS's Northeast Fishery Statistic Office (FSO) will summarize mackerel landings from dealer reports on a weekly basis and post this information on the Northeast Regional Office Web site (*http://www.nero.noaa.gov/*). NMFS staff will closely monitor these landings and industry trends to determine if an inseason adjustment is necessary. Additionally, if an inseason adjustment of the IOY is warranted, the Regional Administrator will notify the Council and the inseason adjustment will be published in the **Federal Register**.

**Atlantic Squids**

*Loligo Squid*

For 2008, this action specifies the *Loligo* squid Max OY at 26,000 mt; the ABC at 17,000 mt; and the research quota (RQ) for up to 3 percent (510 mt) of the ABC. One scientific research project proposal requesting *Loligo* squid RQ was recommended for approval and will be forwarded to the NOAA Grants Office for award. The proposed *Loligo* squid IOY, DAH, and DAP were adjusted to reflect the RQ and equal 16,977 mt. The FMP does not authorize the specification of JVP and TALFF for the *Loligo* squid fishery because of the domestic industry's capacity to harvest and process the OY for this fishery; therefore, there would be no JVP and TALFF in 2008.

**Distribution of the *Loligo* Squid DAH**

For 2008, this action specifies that the *Loligo* squid DAH will be allocated by trimester. Managing the DAH by trimesters, rather than quarters, results in allocations that are the same or higher than the quarterly allocations. Higher allocations may increase the length of time the fishery is open and allow closure projections to be based on more information and, perhaps, to be more accurate. Additionally, managing by trimesters rather than quarters is administratively streamlined because only three, rather than four, closures of the directed fishery could occur during a fishing year. The 2008 trimester allocations are as follows:

TABLE 2.—TRIMESTER ALLOCATION OF LOLIGO SQUID QUOTA IN 2008

| Trimester | Percent | Metric tons [1] | RQ (mt) |
|---|---|---|---|
| I (Jan–Apr) | 43 | 7,300 | NA |
| II (May–Aug) | 17 | 2,886 | NA |
| III (Sep–Dec) | 40 | 6,791 | NA |
| Total | 100 | 16,977 | 23 |

[1] Trimester allocations after 23 mt RQ deduction.

For 2008, the Council recommended that the percentage at which the directed *Loligo* squid fishery would close and the handling of quota overages and underages would be the same as in 2007. Therefore, this action specifies the directed *Loligo* squid fishery would close when 90 percent of the DAH is harvested in Trimesters I and II, and when 95 percent of the DAH is harvested in Trimester III. Additionally, it specifies that any underages from Trimesters I and II would be applied to Trimester III, and any overages from Trimesters I and II would be subtracted from Trimester III.

**Clarification of *Loligo* Squid Gear Requirements**

Regulations at § 648.23(d) specify that net strengtheners have a minimum mesh size of 4½ inches (11.43 cm) and that any device, including net strengtheners, may not be used on the top 50 percent of a codend (i.e., the portion of the codend that is not in contact with the ocean floor when the net is fishing) if it constricts the minimum mesh size to less than the required 1⅞ inch (48 mm). However, any time a 1⅞-inch (48-mm) codend is used with a 4½-inches (11.43-cm) net strengthener, the actual mesh size will be less than 1⅞ inches (48 mm) because the meshes from the codend and the net strengthener will not be in alignment and will overlap. The U.S. Coast Guard brought it to NMFS's attention that *Loligo* squid vessels have net strengtheners covering the top 50 percent of the codend. When questioned about the need for and use of net strengtheners, members of the *Loligo* squid fishing industry explained that codends with a minimum mesh size of 1⅞ inches (48 mm) are of such fine gauge that they will burst if a net strengthener does not surround the entire circumference of the codend. To ensure gear regulations are consistent

with the way the *Loligo* squid fishery needs to operate, this action specifies that net strengtheners, splitting straps, and/or bull ropes or wire may be used around the entire circumference of the codend, provided they do not have a mesh opening of less than 4½ inches (11.43 cm), diamond mesh, inside stretch measure.

*Illex Squid*

This action specifies the *Illex* squid Max OY, IOY, ABC, and DAH at 24,000 mt. The FMP does not authorize the specification of JVP and TALFF for the *Illex* squid fishery because of the domestic fishing industry's capacity to harvest and to process the IOY from this fishery.

*Butterfish*

The status of the butterfish stock was most recently assessed in late 2004 and that assessment concluded that, while overfishing of the stock is not occurring, the stock is overfished. Based on this information, the Council was notified by NMFS on February 11, 2005, that the butterfish stock was designated as overfished, pursuant to the requirements of section 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and the Council is developing a rebuilding plan for the butterfish stock in Amendment 10 to the FMP (Amendment 10). While a butterfish rebuilding program is being developed in Amendment 10, the Council recommended restricting butterfish landings to recent landings levels to prevent an expansion of the fishery and to protect the rebuilding stock. Therefore, this action specifies the butterfish Max OY at 12,175 mt, ABC at 1,500 mt, and IOY, DAH, and DAP at 500 mt. Consistent with MSB regulations, this action specifies zero TALFF for butterfish in 2008 because zero TALFF is established for mackerel.

**Closure of the Butterfish Fishery and the Incidental Butterfish Possession Limit**

Existing regulations specify that NMFS shall close the butterfish fishery when the Regional Administrator projects that 95 percent of the butterfish DAH is projected to be landed, and once the butterfish fishery is closed, the incidental butterfish possession limit is 2,500 lb (1.13 mt) per day. Consistent with the lower butterfish DAH for 2008, this action modifies both the butterfish fishery closure threshold and incidental possession limit. As such, if 80 percent of the butterfish DAH is projected to be landed prior to October 1, a 250-lb (0.11-mt) incidental butterfish possession limit would be in effect for the remainder of the year and if 80 percent of the butterfish DAH is projected to be landed on or after October 1, a 600-lb (0.27-mt) incidental butterfish possession limit would be in effect for the remainder of the year. These measures should prevent the 500-mt butterfish DAH from being exceeded, while allowing for butterfish taken incidentally in other fisheries to be landed, thus reducing discards.

Incidental possession limits for butterfish apply not only during a fishery closure but also year-round to vessels issued incidental catch permits. Because the Council did not explicitly recommend a butterfish possession limit for vessels issued a butterfish incidental catch permit during its June 2007 meeting, the proposed rule for the 2008 MSB specifications and management measures proposed a year-round, 250-lb (0.11-mt) butterfish possession limit for vessels issued incidental butterfish catch permits. In response to this proposed measure, the Council discussed this measure at its January 2008 meeting and recommended a revised butterfish incidental possession limit in a letter to NMFS during public comment on the proposed rule. The Council's recommendation was that the butterfish incidental possession limit for incidental permit holders be set at 600 lb (0.27 mt) per day, unless the butterfish fishery closes prior to October 1, then a 250-lb (0.11-mt) butterfish possession limit would be in effect for the remainder of the year. The Council believes this measure provides consistency for all butterfish permit holders (i.e., limited access and incidental), improves the enforcability of the measure, and would reduce regulatory discarding while limiting directed fishing on butterfish by incidental permit holders. NMFS concurs with the butterfish possession limit recommended by the Council in its comment letter; therefore, this action implements that Council-recommended measure.

**Butterfish Possession Limits**

Regulations at § 648.23(a)(2) specify that trawl vessels possessing 5,000 lb (2.27 mt) or more of butterfish may only fish with nets having a minimum codend mesh size of 3 inches (76 mm). Consistent with the Council's intent to prevent expansion of the butterfish fishery and protect the rebuilding stock as Amendment 10 is being developed, this action specifies that a trawl vessel possessing 1,000 lb (0.45 mt) or more of butterfish may only fish with nets having a minimum codend mesh size of 3 inches (76 mm) and that a vessel issued a butterfish moratorium permit may not fish for, possess, or land more than 5,000 lb (2.27 mt) of butterfish per trip per day.

**Comments and Responses**

NMFS received five comment letters on the proposed 2008 MSB specifications and management measures; one letter was from the Council, three letters were from industry representatives, and one letter was from an individual. Comments on the FMP that were not specific to the 2008 specifications and management measures described in the proposed rule are not responded to in this final rule.

*Comment 1:* One commenter indicated general support for a reduction of commercial quotas, the use of accurate harvest information to develop quotas, and the need for protection of the public fishery resource.

*Response:* NMFS acknowledges the importance of the issues raised by the commenter, which relate generally to 2008 MSB specifications and management measures. As specified in the FMP, the Council developed the 2008 MSB specifications and management measures using the best available data regarding the resource and the fishery. Additionally, the 2008 MSB specifications and management measures are consistent with the rules specified in the FMP to promote utilization and conservation of the MSB resource.

*Comment 2:* Three industry representatives expressed support for the proposed 2008 MSB specifications, indicating that they are consistent with the best available science and status of the fishery resources.

*Response:* NMFS concurs with the commenters.

*Comment 3:* Three industry representatives expressed support for an inseason adjustment of the mackerel IOY, up to the ABC, if landings projections indicate that 70 percent of the IOY will be landed during the fishing year. Additionally, these industry representatives stressed the importance of speedy implementation of an inseason action, if warranted, to prevent any interruption of the fishery.

*Response:* If information demonstrates an inseason adjustment is necessary, NMFS will make the adjustment in a manner that will avoid interruption in the fishery, as specified in this final rule.

*Comment 4:* One industry representative supported the proposed change of the mackerel incidental possession limit from an allowable percentage of catch (10 percent, by

weight, of all fish on board) to a fixed limit (20,000 lb (4.54 mt)), while two industry representatives opposed this change. Of those opposed, one industry representative contended that it is not feasible to eliminate mackerel bycatch in the Atlantic herring fishery to conform with a fixed weight standard, and recommended a thorough sampling of both herring and mackerel fisheries, before a 20,000-lb (4.54-mt) mackerel incidental possession limit is established, to ensure the herring fishery is not negatively impacted by the 2008 MSB specifications and management measures. The other industry representative critical of the proposed change argued that the herring fishery is a high-volume fishery, where catch is pumped aboard the vessel, and crew do not have the ability to sort and weigh incidentally caught mackerel, but they can estimate a catch ratio. This commenter believes the enforceability of a limit that is a percentage of catch or a fixed value are equal, and the only feasible way to determine the amount of bycatch is through statistical sub-sampling of the catch and an extrapolation of those data.

*Response:* At its June 2007 meeting, the Council discussed revising the mackerel incidental possession limit from a percentage of catch to a fixed limit. Council discussion focused on the issue that possession limits that are a percent of the total catch on board are difficult to estimate and enforce because the relative amounts of all species (i.e., target and bycatch) must be known. Therefore, there was support during the meeting to revise the mackerel incidental possession limit, such that it would be easier to estimate and enforce, because it would require only knowing the amount of mackerel bycatch on board, and that it would be similar to the fixed value incidental possession limits for squid and butterfish.

The Council considered several competing objectives in the development of a revised incidental possession limit for mackerel. First, the possession limit needed to be low enough to ensure that the mackerel ABC would not be exceeded. Secondly, the possession limit needed to be set high enough to minimize regulatory discarding of mackerel in fisheries where mackerel is taken incidentally, but not so high as to encourage directed fishing. Lastly, because small-scale mackerel fisheries contribute only minimally to the overall mackerel harvest, the Council wanted the incidental possession limit to be high enough to allow small-scale fisheries to continue after the directed fishery was closed. After considering these factors, the Council recommended a mackerel incidental possession limit of 20,000 lb (4.54 mt) for 2008.

According to the Magnuson-Stevens Act, NMFS either approves or disapproves a management measure recommended by the Council, but NMFS cannot implement a measure not considered by the Council. Since NMFS concurs with the Council that a possession limit that is a fixed value is easier to estimate and enforce than a percentage of catch, this action implements the Council-recommended mackerel incidental possession limit of 20,000 lb (4.54 mt) rather than disapproving that measure and maintaining the mackerel incidental possession limit of 10 percent, by weight, of all fish on board.

*Comment 5:* One industry representative expressed support for the measure to clarify the gear requirement for *Loligo* squid, specifically, the provisions that a net strengthener could be used around the entire circumference of the codend and that the minimum mesh size of the net strengthener was 4.5 inches (11.43 cm).

*Response:* NMFS believes this clarification is appropriate and necessary. Allowing the net strengthener to be used around the entire circumference of the codend, instead of just on the lower 50 percent of the net, is not expected to significantly affect the escapement of small *Loligo* squid from the codend, but it does ensure that *Loligo* squid gear requirements are consistent with the way the fishery is operated.

## Changes From the Proposed Rule

In the proposed rule, § 648.25(d)(1) specified that if a vessel has been issued a butterfish incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 250 lb (0.11 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day. In response to the Council's comment letter on this limit, NMFS reconsidered this limit, and this action is revising the limit consistent with the Council's recommendation. Therefore, § 648.25(d)(1) will specify that if a vessel has been issued a butterfish incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 600 lb (0.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, unless the directed fishery for butterfish closes prior to October 1, then a vessel that has been issued a butterfish incidental catch permit may not fish for, possess, or land more than 250 lb (0.11 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day.

## Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Acting Assistant Administrator has determined that this rule is consistent with the Atlantic Mackerel, Squid, and Butterfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866 (E.O. 12866).

NMFS, pursuant to section 604 of the Regulatory Flexibility Act, has prepared a final regulatory flexibility analysis (FRFA), included in this final rule, in support of the 2008 MSB specifications and management measures. The FRFA describes the economic impact that this final rule, along with other non-preferred alternatives, will have on small entities.

The FRFA incorporates the economic impacts and analysis summarized in the IRFA, a summary of the significant issues raised by the public, and a summary of analyses prepared to support the action (i.e., the EA and the RIR). The contents of these documents are not repeated in detail here. A copy of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES**). A complete description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to the proposed and final rules and is not repeated here.

## Statement of Need for This Action

This action specifies 2008 specifications and management measures for MSB fisheries and modifies existing management measures to improve the monitoring and management of MSB fisheries.

### *A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments*

A summary of the comments received and NMFS' responses thereto is contained in the preamble and is not repeated here.

## Description and Estimate of Number of Small Entities to Which the Rule Will Apply

*Based on permit data for 2006, the number of potential fishing vessels in the 2008 fisheries are as follows:* 383 for

*Loligo* squid/butterfish; 78 for *Illex* squid; 2,495 for mackerel; and 2,016 vessels with incidental catch permits for squid/butterfish. There are no large entities participating in this fishery, as defined in section 601 of the RFA. Therefore, there are no disproportionate economic impacts on small entities. Many vessels participate in more than one of these fisheries; therefore, permit numbers are not additive.

**Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

*Description of the Steps the Agency Has taken to Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected*

**Actions Implemented With the Final Rule**

The mackerel IOY specified in this action (115,000 mt, with 15,000 mt allocated to recreational catch) represents no constraint on vessels in this fishery. This level of landings has not been achieved by vessels in this fishery in recent years. Mackerel landings for 2001–2003 averaged 24,294 mt. Landings in 2004 were 55,528 mt, landings in 2005 were 43,246 mt, and landings for 2006 were 58,279 mt. This action also specifies an inseason adjustment, if landings approach the IOY early in the fishing year, to increase the IOY up to the ABC (156,000 mt). Therefore, no reductions in revenues for the mackerel fishery are expected as a result of this action; in fact, an increase in revenues as a result of the action is possible. Based on 2006 data, the mackerel fishery could increase its landings by 56,721 mt in 2008, if it takes the entire IOY. In 2006, the last year with complete financial data, the average value for mackerel was $418 per mt. Using this value, the mackerel fishery could see an increase in revenues of $23,709,378 as a result of the 2008 IOY (115,000 mt), and an additional increase in revenues of $17,138,000 as a result of the inseason adjustment to increase the IOY up to the ABC (156,000 mt).

Additionally, this action changes the percentage at which the directed mackerel fishery would close (from 80 percent to 90 percent of OY) and the incidental mackerel possession limit after the directed fishery is closed (from 10 percent, by weight, of the total fish on board to a fixed possession limit of 20,000 lb (4.54 mt)). Under these changes, it is likely that a higher level of revenue could be realized by vessels engaged in the directed mackerel fishery compared to the other alternatives. An increase in revenues of 10 percent of OY in the directed fishery could be realized, amounting to a potential increase in landings in the directed fishery on the order about 10,000 mt. Given recent prices, this would translate into increased revenues of about $4.2 million, or $15,000 per vessel.

The *Loligo* squid IOY (17,000 mt) specified in this action represents status quo as compared to 2007. *Loligo* squid landings for 2001–2003 averaged 14,092 mt. Landings in 2004 were 15,447, landings in 2005 were 16,984 mt, and landings in 2006 were 15,880 mt. In 2006, the last year for which complete financial data are available, the average value for *Loligo* squid was $1,751 per mt. Implementation of this action would not result in a reduction in revenue or a constraint on restraint on the fishery in 2008.

The *Illex* squid IOY (24,000 mt) specified in this action represents status quo as compared to 2007. *Illex* squid landings for 2001–2003 averaged 4,350 mt. Landings in 2004 were 26,098 mt, landings in 2005 were 12,032 mt, and landings in 2006 were 13,944 mt. In 2006, the last year for which complete financial data are available, the average value for *Illex* squid was $578 per mt. Implementation of this action would not result in a reduction in revenue or a constraint on the fishery in 2008.

The butterfish IOY (500 mt) specified in this action represents no constraint to vessels relative to the landings in recent years. Due to market conditions, there has not been a directed butterfish fishery in recent years; therefore, recent landings have been low. Landings in 2004 were 537 mt, landings in 2005 were 437 mt, and landings in 2006 were 554 mt. Given the lack of a directed butterfish fishery and low butterfish landings, this action is not expected to reduce revenues in this fishery. Based on 2006 data, the value of butterfish was $1,472 per mt.

This action also modifies the trigger for closing the directed butterfish fishery and reduces butterfish possession limits. Specifically, this action changes the percentage at which the directed butterfish fishery would close (from 95 percent to 80 percent of DAH) and the incidental butterfish possession limit after the directed fishery is closed (from 2,500 lb (1.13 mt) to either 600 lb (0.27 mt) or 250 lb (0.11 mt)). Additionally, this action implements a 5,000-lb (2.27-mt) butterfish possession limit for all trips and reduces the possession limit for trips using small mesh (i.e., less than 3 inches (76 mm)) from 5,000 lb (4.54 mt) to 1,000 lb (0.45 mt). These measures potentially limit the amount of fishing effort for butterfish as the stock rebuilds compared to the other alternatives. Therefore, there could be some minor losses in revenue for vessels that wanted to direct on butterfish in the short term (i.e., during the rebuilding period).

**Alternatives to the Actions in the Final Rule**

The Council analysis evaluated three alternatives for mackerel, and all of them would have set IOY at 115,000 mt, maintained the status quo trigger for closing the directed fishery, and maintained the status quo incidental mackerel possession limit. This IOY and these management measures do not represent a constraint on vessels in this fishery, so no negative impacts on revenues in this fishery are expected as a result of these alternatives. One of these alternatives (status quo) would have set the ABC at 186,000 mt, and the other could have set the ABC at 335,000 mt. These alternatives were not adopted by the Council because that level of ABC is not consistent with the overfishing definition in the FMP, as updated by the most recent stock assessment. Furthermore, alternatives that would set a higher harvest were not adopted because they proposed harvest that was too high in light of social and economic concerns relating to TALFF. The specification of TALFF would have limited the opportunities for the domestic fishery to expand, and therefore would have resulted in negative social and economic impacts to both U.S. harvesters and processors (for a full discussion of the TALFF issue, see the earlier section on Atlantic mackerel).

For *Loligo* squid, all alternatives would have set Max OY at 26,000 mt and ABC, IOY, DAH, and DAP at 17,000 mt. While the annual quota under all alternatives represents status quo, alternatives differ in their allocation of the annual quota and incidental *Loligo* squid possession limit for *Illex* squid vessels. Two alternatives would have allocated quotas by trimester. Of these, both include an increase of the *Loligo*

squid incidental possession limit for *Illex* squid vessels during August–October closures of the *Loligo* squid fishery; one alternative specifies a 5,000-lb (2.27-mt) limit for vessels fishing seaward of the small-mesh exemption line (approximating the 50-fm (91-m) depth contour), and the other specifies a 10,000-lb (4.54-mt) limit for vessels fishing seaward of a boundary approximating the 80-fm (146-m) depth contour. As described in the preamble of this rule, there are no tools in place for NMFS to monitor spatial activities of the *Illex* squid fleet; therefore, this possession limit provision of these alternatives will not be implemented because it cannot be administered effectively. The third alternative would allocate quota by quarters (status quo). Difference in seasonal quota distribution may have distributive effects on seasonal participants in the fishery; however, all alternatives are expected to result in the same total landings for 2008.

For *Illex* squid, one alternative considered would have set Max OY, ABC, IOY, DAH, and DAP at 30,000 mt. This alternative would allow harvest far in excess of recent landings in this fishery. Therefore, there would be no constraints and, thus, no revenue reductions, associated with this alternative. However, the Council considered this alternative unacceptable because an ABC specification of 30,000 mt may not prevent overfishing in years of moderate to low abundance of *Illex* squid. Another alternative considered would have set MAX OY at 24,000 mt and ABC, IOY, DAH, and DAP at 19,000 mt. The Council considered this alternative unacceptable because it was unnecessarily restrictive.

For butterfish, one alternative considered would have set the ABC at 4,525 mt and IOY, DAH, and DAP at 1,861 mt, while another would have set ABC at 12,175 mt and IOY, DAH, and DAP 9,131 mt. These amounts exceed the landings of this species in recent years. Both alternatives would have maintained the status quo trigger for closing the directed fishery, incidental possession limit, and possession limit for trips using mesh smaller than 3 inches (76 mm). Therefore, neither alternative represents a constraint on vessels in this fishery or would reduce revenues in the fishery. However, neither of these alternatives were adopted because they would likely result in overfishing and the additional depletion of the spawning stock biomass of an overfished species.

**Small Entity Compliance Guide**

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the MSB fisheries. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator and are also available from NMFS, Northeast Region (see **ADDRESSES**).

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 31, 2008.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.14, paragraphs (a)(73), (p)(3), (p)(5), and (p)(11) are revised to read as follows:

### § 648.14 Prohibitions.

(a) * * *

(73) Take, retain, possess, or land more mackerel, squid, or butterfish than as specified at § 648.25.

* * * * *

(p) * * *

(3) Take, retain, possess, or land mackerel, squid, or butterfish in excess of a possession allowance specified at § 648.25.

* * * * *

(5) Fish with or possess nets or netting that do not meet the minimum mesh requirements for *Loligo* or butterfish specified in § 648.23, or that are modified, obstructed, or constricted, if subject to the minimum mesh requirements, unless nets or netting are stowed in accordance with § 648.23(b) or the vessel is fishing under an exemption specified in § 648.23(a)(3)(ii).

* * * * *

(11) Possess 1,000 lb (0.45 mt) or more of butterfish, unless the vessel meets the minimum mesh size requirement specified in § 648.23(a)(2).

* * * * *

■ 3. In § 648.22, paragraph (c) is removed and paragraph (a) is revised to read as follows:

### § 648.22 Closure of the fishery.

(a) *Closing procedures.* (1) NMFS shall close the directed mackerel fishery in the EEZ when the Regional Administrator projects that 90 percent of the mackerel DAH is harvested, if such a closure is necessary to prevent the DAH from being exceeded. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.25. When the Regional Administrator projects that the DAH for mackerel shall be landed, NMFS shall close the mackerel fishery in the EEZ and the incidental catches specified for mackerel at § 648.25 will be prohibited.

(2) NMFS shall close the directed fishery in the EEZ for *Loligo* when the Regional Administrator projects that 90 percent of the *Loligo* quota is harvested in Trimesters I and II, and when 95 percent of the *Loligo* DAH has been harvested in Trimester III. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.25.

(3) NMFS shall close the directed *Illex* fishery in the EEZ when the Regional Administrator projects that 95 percent of the *Illex* DAH is harvested. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.25.

(4) NMFS shall close the directed butterfish fishery in the EEZ when the Regional Administrator projects that 80 percent of the butterfish DAH is harvested. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.25.

* * * * *

■ 4. In § 648.23, paragraphs (a)(4) and (d) are removed and paragraphs (a)(2) and (a)(3) are revised to read as follows:

### § 648.23 Gear restrictions.

(a) * * *

(2) Owners or operators of otter trawl vessels possessing 1,000 lb (0.45 mt) or more of butterfish harvested in or from

the EEZ may only fish with nets having a minimum codend mesh of 3 inches (76 mm) diamond mesh, inside stretch measure, applied throughout the codend for at least 100 continuous meshes forward of the terminus of the net, or for codends with less than 100 meshes, the minimum mesh size codend shall be a minimum of one-third of the net, measured from the terminus of the codend to the headrope.

(3) Owners or operators of otter trawl vessels possessing *Loligo* harvested in or from the EEZ may only fish with nets having a minimum mesh size of 1⅞ inches (48 mm) diamond mesh, inside stretch measure, applied throughout the codend for at least 150 continuous meshes forward of the terminus of the net, or for codends with less than 150 meshes, the minimum mesh size codend shall be a minimum of one-third of the net measured from the terminus of the codend to the headrope, unless they are fishing consistent with exceptions specified in paragraph (b) of this section.

(i) *Net obstruction or constriction*. Owners or operators of otter trawl vessels fishing for and/or possessing *Loligo* shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net that results in an effective mesh opening of less than 1⅞ inches (48 mm) diamond mesh, inside stretch measure. ''Top of the regulated portion of the net'' means the 50 percent of the entire regulated portion of the net that would not be in contact with the ocean bottom if, during a tow, the regulated portion of the net were laid flat on the ocean floor. However, owners or operators of otter trawl vessels fishing for and/or possessing *Loligo* may use net strengtheners (covers), splitting straps, and/or bull ropes or wire around the entire circumference of the codend, provided they do not have a mesh opening of less than 4½ inches (11.43 cm) diamond mesh, inside stretch measure. For the purpose of this requirement, head ropes are not to be considered part of the top of the regulated portion of a trawl net.

(ii) *Illex fishery*. Owners or operators of otter trawl vessels possessing *Loligo* harvested in or from the EEZ and fishing during the months of June, July, August, and September for *Illex* seaward of the following coordinates (copies of a map depicting this area are available from the Regional Administrator upon request) are exempt from the *Loligo* gear requirements specified at paragraph (a)(3) of this section, provided they do not have available for immediate use, as defined in paragraph (b) of this section, any net, or any piece of net, with a mesh size less than 1⅞ inches (48 mm) diamond mesh or any net, or any piece of net, with mesh that is rigged in a manner that is prohibited by paragraph (a)(3) of this section, when the vessel is landward of the specified coordinates.

| Point | N. Lat. | W. Long. |
|---|---|---|
| M1 | 43°58.0′ | 67°22.0′ |
| M2 | 43°50.0′ | 68°35.0′ |
| M3 | 43°30.0′ | 69°40.0′ |
| M4 | 43°20.0′ | 70°00.0′ |
| M5 | 42°45.0′ | 70°10.0′ |
| M6 | 42°13.0′ | 69°55.0′ |
| M7 | 41°00.0′ | 69°00.0′ |
| M8 | 41°45.0′ | 68°15.0′ |
| M9 | 42°10.0′ | 67°10.0′ |
| M10 | 41°18.6′ | 66°24.8′ |
| M11 | 40°55.5′ | 66°38.0′ |
| M12 | 40°45.5′ | 68°00.0′ |
| M13 | 40°37.0′ | 68°00.0′ |
| M14 | 40°30.0′ | 69°00.0′ |
| M15 | 40°22.7′ | 69°00.0′ |
| M16 | 40°18.7′ | 69°40.0′ |
| M17 | 40°21.0′ | 71°03.0′ |
| M18 | 39°41.0′ | 72°32.0′ |
| M19 | 38°47.0′ | 73°11.0′ |
| M20 | 38°04.0′ | 74°06.0′ |
| M21 | 37°08.0′ | 74°46.0′ |
| M22 | 36°00.0′ | 74°52.0′ |
| M23 | 35°45.0′ | 74°53.0′ |
| M24 | 35°28.0′ | 74°52.0′ |

* * * * *

■ 5. Section 648.25 is added to read as follows:

**§ 648.25 Possession restrictions.**

(a) *Atlantic mackerel*. During a closure of the directed Atlantic mackerel fishery, vessels may not fish for, possess, or land more than 20,000 lb (9.08 mt) of mackerel per trip at any time, and may only land mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(b) *Loligo*. During a closure of the directed fishery for *Loligo*, vessels may not fish for, possess, or land more than 2,500 lb (1.13 mt) of *Loligo* per trip at any time, and may only land *Loligo* once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. If a vessel has been issued a *Loligo* incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 2,500 lb (1.13 mt) of *Loligo* per trip at any time and may only land Loligo once on any calendar day.

(c) *Illex*. During a closure of the directed fishery for *Illex*, vessels may not fish for, possess, or land more than 10,000 lb (4.54 mt) of *Illex* per trip at any time, and may only land *Illex* once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. If a vessel has been issued an *Illex* incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 10,000 lb (4.54 mt) of *Illex* per trip at any time, and may only land *Illex* once on any calendar day.

(d) *Butterfish*. (1) During a closure of the directed fishery for butterfish that occurs prior to October 1, vessels may not fish for, possess, or land more than 250 lb (0.11 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. During a closure of the directed fishery for butterfish that occurs on or after October 1, vessels may not fish for, possess, or land more than 600 lb (0.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day. If a vessel has been issued a butterfish incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 600 lb (0.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, unless the directed fishery for butterfish closes prior to October 1, then a vessel that has been issued a butterfish incidental catch permit may not fish for, possess, or land more than 250 lb (0.11 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day.

(2) A vessel issued a butterfish moratorium permit (as specified at § 648.4(a)(5)(i)) may not fish for, possess, or land more than 5,000 lb (2.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

[FR Doc. E8–7062 Filed 4–3–08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 665

**[Docket No. 071211828–8448–02]**

**RIN 0648–AU22**

### Fisheries in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; Management Measures in the Main Hawaiian Islands

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements management measures for the vessel-based bottomfish fishery in the Main Hawaiian Islands, including requirements for non-commercial (recreational and subsistence) permits and data reporting, a closed season, annual total allowable catch limits, and non-commercial bag limits. This action is intended to end the overfishing of bottomfish in the Hawaiian Archipelago.

**DATES:** This final rule is effective April 1, 2008, with the following exceptions:

1. The following amendments are effective until September 1, 2008:

a. In § 665.12, the definition of *Hawaii restricted bottomfish species fishing year 2007–08*;

b. Paragraph (g) in § 665.72 (the TAC for the 2007–08 fishing year); and

c. § 665.74 (the closed season).

2. The amendments to §§ 665.13, 665.14, and 665.61, which require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). When OMB approval is received, the effective date will be announced in the **Federal Register**.

**ADDRESSES:** This final rule implements Amendment 14 to the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (including a final environmental impact statement, regulatory impact review, and initial regulatory flexibility analysis). Copies of Amendment 14 are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226. A Record of Decision (ROD) identifying the selected alternative was prepared for this final rule and is available from William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814–4700. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to William L. Robinson (see **ADDRESSES**), or to David Rostker, OMB, by e-mail to *David_Rostker@omb.eop.gov*, or by fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Karla Gore, NMFS PIR, 808–944–2273.

**SUPPLEMENTARY INFORMATION:** This final rule is accessible at the Office of the **Federal Register**'s web site: *www.gpoaccess.gov/fr/*.

Bottomfish fishing in Hawaii is managed under the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (Bottomfish FMP), which was developed by the Council and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Hawaii bottomfish are managed as a single archipelago-wide multi-species stock complex (bottomfish complex). The bottomfish complex is comprised of certain deep-slope snappers, groupers, and jacks. Fisheries and management programs for Hawaiian bottomfish operate in two large geographic areas—the Northwestern Hawaiian Islands (NWHI) and the main Hawaiian Islands (MHI).

There is currently no mandatory permitting or data reporting requirement for non-commercial fishing. Some data on the non-commercial bottomfish fishery are collected through surveys. NMFS estimates that, based on the State boat registration program and independent surveys, 800–5,000 fishermen participate in the non-commercial bottomfish fishery.

NMFS, on behalf of the Secretary of Commerce, determined that overfishing is occurring on the bottomfish complex in the Hawaiian Archipelago, with the primary problem being excessive fishing mortality on seven deep water species (the ''Deep 7'' species) in the MHI. The Deep 7 species are onaga (*Etelis coruscans*), ehu (*E. carbunculus*), gindai (*Pristipomoides zonatus*), kalekale (*P. sieboldii*), opakapaka (*P. filamentosus*), lehi (*Aphareus rutilans*), and hapu'upu'u (*Epinephelus quernus*).

On May 27, 2005, NMFS notified the Council of the overfishing and requested the Council to take appropriate action to end the overfishing (70 FR 34452, June 14, 2005). In response, the Council developed Amendment 14 and management measures, which this final rule implements. This final rule will reduce the fishing mortality for the Deep 7 species in the MHI by approximately 24 percent in 2008, will establish a mechanism (annual TAC) to respond to future changes in stock status, and will improve data collection from non-commercial bottomfish fisheries in Federal waters around the MHI.

The final rule implements several management measures for vessel-based bottomfish fishing in the MHI. First, a Federal bottomfish permit is required for vessel owners and fishermen to conduct vessel-based non-commercial fishing for any bottomfish management unit species (BMUS), not just Deep 7 species, in Federal waters around the MHI (except customers of charter fishing trips).

Second, the final rule requires operators of non-commercial fishing vessels to submit daily Federal logbooks that document bottomfish fishing effort and catch for each fishing trip, and vessel owners share the responsibility for submitting the logbooks in a timely manner. The data from these logbooks will be the basis for calculating non-commercial fishing effort and harvest of BMUS, bycatch, and interactions with protected species.

Third, the final rule implements a closed season from May through August 2008. During this closure, fishing for Deep 7 species will be prohibited in Federal waters. Fishing for bottomfish species other than Deep 7 species will not be prohibited during the closed season.

Fourth, the final rule establishes an annual total allowable catch (TAC) for the MHI bottomfish fishery. The TAC will be determined each fishing year using the best available scientific information, commercial and non-commercial fishing data, and other information, and will consider the associated risk of overfishing. NMFS will publish in the **Federal Register** by August 31 the TAC for the upcoming fishing year, and will use other means to notify permit holders of the TAC. When the TAC is projected to be reached, NMFS will publish notification in the **Federal Register** and use other means to notify permit holders that the fishery will be closed on a specified date, providing fishermen with two weeks advance notice of the closure. The TAC for the 2007–08 fishing year (October 2007 through April 2008) is set at 178,000 lb (80,740 kg) of Deep 7 species. Progress toward the 2007–08 TAC is determined by the catch reported by holders of Hawaii commercial marine license (CML). When the 2007–08 TAC is projected to be reached, the commercial and non-commercial fisheries for Deep 7 bottomfish will be closed. There is no prohibition on fishing for other bottomfish species throughout the year. NMFS intends to repeal the Federal non-commercial bag limits once the data collected from the non-commercial bottomfish fishery are determined to be adequate to include in the annual TAC calculation.

The final rule implements Federal bottomfish bag limits for non-commercial fishing. Non-commercial fishermen are allowed to catch, possess, and land as many as five Deep 7 fish combined, per person, per fishing trip in

Federal waters. The State of Hawaii also has a similar bag limit for non-commercial fishing.

Additional background information on this final rule may be found in the preamble to the proposed rule published on February 1, 2008 (73 FR 6101), and is not repeated here.

**Comments and Responses**

On December 22, 2007, NMFS announced in the **Federal Register** the availability of Amendment 14 (72 FR 73308), and on February 1, 2008, NMFS published a notice of the proposed rule (73 FR 6101). The public comment period for the amendment ended on February 25, 2008, and the proposed rule comment period ended on March 7, 2008. NMFS received comments from 17 entities, including the State of Hawaii, Department of Land and Natural Resources, and non-commercial and commercial bottomfish fishermen, and responds as follows:

*Comment 1:* NMFS should post online the available portion of the TAC to allow fishermen access to information in a timely manner.

*Response:* NMFS will post the catch trends on the PIRO website at *www.fpir.noaa.gov* to allow tracking of harvests to be counted toward the TAC.

*Comment 2:* A real cause for the decline in Hawaii bottomfish is that kahala (amberjacks) and other non-Deep 7 bottomfish species may be out-competing the Deep 7 bottomfish species.

*Response:* NMFS does not have data to determine whether or not the comment is correct. The final rule will allow for better collection of information from non-commercial bottomfish fishermen which will give fishery managers a better understanding of the catch composition and relative abundance of all BMUS. With improved data, fishery managers can make effective bottomfish management decisions to address these concerns, such as interspecific competition, in the future.

*Comment 3:* Any new data collection requirement for commercial fishermen will lead to duplication of effort and unnecessary expense.

*Response:* The final rule implements new permitting and reporting requirements only for non-commercial bottomfish fishermen. There are no new reporting requirements for any commercial fishermen, who must continue to report their catch to the State of Hawaii. The final rule clarifies the reporting requirements for ''mixed'' fishing trips where some fishermen hold non-commercial bottomfish permits and some hold State Commercial Marine Licenses (State CMLs), and for bottomfish charter fishing customers, to minimize redundant reporting.

*Comment 4:* The State's closed areas (bottomfish restricted fishing areas, or BRFAs) should be removed because they reduce suitable fishing grounds and are too restrictive when combined with the new Federal regulations.

*Response:*The BRFAs are under the management purview of the State of Hawaii, and any changes to this management program must be done by the State, not NMFS. The Federal measures implemented by this final rule and the State's BRFAs are both intended to conserve Hawaiian bottomfish.

*Comment 5:* Bag limits should not apply to commercial fishermen, only to non-commercial fishermen.

*Response:* This final rule establishes bag limits only for non-commercial bottomfish fishermen. State-licensed commercial fishermen are not currently subject to bag limits.

*Comment 6:* More enforcement of current State bottomfish regulations is needed.

*Response:* NMFS agrees that more enforcement is generally needed for effective fishery management, whether it is for State or Federal regulations. NOAA's Office for Law Enforcement (NOAA OLE), the U.S. Coast Guard (USCG), and the State of Hawaii's Division of Conservation and Resources Enforcement will work together to enforce the new regulations.

*Comment 7:* All buyers and sellers of bottomfish should be required to submit reports to eliminate the selling of bottomfish by non-commercial fishermen.

*Response:* This final rule requires bottomfish fishermen to be permitted as either commercial or non-commercial, and requires both categories of permits to report their catch. Under current State law, all fish buyers are required to submit State dealer reports for any fish that they purchase. Dealers must purchase fish only from State-licensed commercial fishermen. The dealer report provides a way to cross-reference fish sales by fishermen.

*Comment 8:* The closed season should be the only management measure implemented as it would achieve the desired reduction in catch levels, but be less burdensome to fishermen because it would not require non-commercial permits or reporting.

*Response:* The 2008 closed season is intended to reduce fishing mortality to the target level to end overfishing in the first year. A TAC is more effective and less-burdensome than seasonal closures for preventing overfishing in the long term. To establish a TAC each year, information about commercial and non-commercial fishing is essential. This management strategy requires that both commercial and non-commercial fishermen hold fishing permits and submit reports on their catch and effort to the State and/or NMFS, as appropriate.

*Comment 9:* The regulations should not include jacks with the other BMUS.

*Response:* Jacks, such as ulua, are BMUS, but they are not Deep 7 species, and fishing for jacks is not restricted by this final rule. Only vessel-based fishing for Deep 7 species is subject to the 2008 closed season and the TAC. Information on the catches of jacks and other BMUS by non-commercial vessel-based fishermen will be collected under the new reporting requirements for comprehensive monitoring of the fishery overall.

*Comment 10:* Many commercial fishermen have relinquished their State CML because of stringent USCG regulations that apply to commercial fishing vessels. The proposed regulations that require all fishing vessels to have permits would be too burdensome on fishermen.

*Response:* This final rule creates permit requirements only for non-commercial bottomfish fishermen. As such, the USCG requirements governing commercial fishing vessels are not within the purview of this final rule.

*Comment 11:* Enforcement of bag limits is difficult and should not be applied to commercial fishermen because it would impact their livelihood.

*Response:* This final rule establishes bag limits only for non-commercial bottomfish fishermen. State-licensed commercial fishermen are not currently subject to bag limits. NOAA OLE, the USCG, and the State of Hawaii Division of Conservation and Resources Enforcement will work together to enforce the new requirements, including non-commercial bag limits.

*Comment 12:* The commercial fishery should be limited to operating twice a week and the non-commercial fishery should operate the remainder of the week with the non-commercial bag limit in place.

*Response:* Daily restrictions and rotating closures were not considered by the Council and NMFS for this final rule. The effectiveness of the rule in ending bottomfish overfishing will be periodically reevaluated, and may be adjusted in the future, if necessary. Alternative management measures, such as daily restrictions and rotating closures, could be considered for future implementation.

*Comment 13:* The TAC should be used to manage the commercial fleet, and the non-commercial fishery should be managed only through bag limits.

*Response:* NMFS has determined that a TAC for both the commercial and non-commercial fleet is the most effective way to ensure that bottomfish stocks do not continue to experience overfishing. Non-commercial bag limits will also help to relieve fishing pressure on the stocks. The effect of these measures will be monitored and adjustments made in the future, if necessary.

*Comment 14:* Non-commercial and commercial vessels should use different colors for vessel marking to make enforcement easier.

*Response:* The final rule establishes requirements for non-commercial bottomfish fishing, while current State regulations continue to apply to commercial fishing. Because the State already has requirements for the identification of bottomfish vessels, this final rule will exempt non-commercial vessels that are compliant with State's vessel marking requirements from the Federal requirements. Special color-coding of vessel markings to facilitate the identification of bottomfish vessels is a good idea, and NMFS will raise the idea with enforcement officials for consideration in future rulemakings.

*Comment 15:* The reporting requirement should be voluntary due to the financial burden that mandatory reporting would impose.

*Response:* Permits and reporting are essential to ensure that accurate and complete information about non-commercial bottomfish fishing is collected for the purposes of setting an appropriate TAC on an annual basis. NMFS estimates that the time burden for completing non-commercial permit applications to be 30 minutes per year, and 20 minutes for reporting catch and effort information in the logbooks after each fishing trip. The logbooks are free to fishermen, and the reporting cost is limited to mailing the reports to NMFS. The permit will cost less than $80 (probably in the range $25–40), and NMFS determined the costs associated with permitting and reporting are nominal.

*Comment 16:* The closed season should be five months rather than four months.

*Response:* The Council and NMFS chose a four-month closed season because the best available scientific information indicates that it will provide a balance between reducing fishing effort to levels sufficient to end the overfishing, and providing continued opportunities for bottomfish fishing.

*Comment 17:* A fleet-wide TAC and seasonal closure are the only management measures that should implemented.

*Response:* The closed season will address overfishing only in 2008. In the long term, a TAC will be the primary measure to end and prevent overfishing of bottomfish. To implement an effective TAC program, information on the numbers of bottomfish fishermen and their effort and catch is needed. Thus, non-commercial permits and data reporting are essential for the overall management program. Currently, information is collected only for one sector, commercial bottomfish fishing. Therefore, collecting information about non-commercial fishing is necessary, and best accomplished through non-commercial permits and data reporting. The non-commercial information will give us a better understanding of the interplay between the bottomfish fishery and other fishing activities. This information will be combined with the commercial data to set an annual TAC to end and prevent overfishing of Hawaiian bottomfish.

*Comment 18:* A TAC will create a ''race to the fish,'' will cause high-grading, and may put smaller vessels at risk as they attempt to catch their share of the TAC fish, possibly in unsafe sea conditions, before the fishery closes.

*Response:* There may be a ''race to the fish'' early in the open season as fishermen try to ensure that they catch their share of the TAC. However, this final rule adjusts the fishing year to start late in the calendar year so the fishery would likely remain open during the winter holiday season, a time of increased demand for bottomfish. This may reduce some of the incentive to fish during especially unsafe sea conditions. High-grading should not be an issue, as all Deep 7 bottomfish caught, whether kept or discarded, will be counted toward the TAC.

*Comment 19:* The vessel marking requirements for non-commercial fishermen are impractical and onerous. Vessels are already required to be registered and marked according to the State of Hawaii regulations.

*Response:* NMFS agrees, and in the final rule has amended the regulations to exempt from the Federal requirements those vessels that are in compliance with State bottomfish vessel marking requirements.

*Comment 20:* NMFS is asking for comment, but the decisions have already been made regarding the proposed rule.

*Response:* NMFS reads and considers every comment received, and uses these comments to consider whether to implement or change the proposed regulations, consistent with Amendment 14. Comments received on its proposed rule led NMFS to reconsider several aspect of the rule, and resulted in changes from the proposed rule for several regulations, such as vessel marking requirements.

*Comment 21:* Fishing is not the only cause of the reduced fish population. Pollution, development, and global warming should be considered as they are larger threats against the ecosystem.

*Response:* The final supplementary EIS (FSEIS) considered and analyzed both fishing and non-fishing impacts on bottomfish resources. In addition, the Council is developing fishery ecosystem management plans that would address such non-fishing impacts on the Hawaii ecosystem. Nonetheless, fishing has been identified as a major cause of bottomfish overfishing and, as such, the final rule will control bottomfish fishing mortality so that bottomfish stocks are sustained for future generations.

*Comment 22:* A bag limit of five Deep 7 species is too low.

*Response:* This final rule implements Federal non-commercial bag limits that complement existing State bag limits. The non-commercial bag limit of five Deep 7 bottomfish is consistent with existing State regulations for non-commercial bottomfish fishing. NMFS intends to repeal the Federal non-commercial bag limits once the data collected from the non-commercial bottomfish fishery are determined to be adequate to include in the annual TAC calculation.

*Comment 23:* There should be BRFAs or a seasonal closure, not both.

*Response:* The 2008 closed season is being implemented to immediately end bottomfish overfishing, and the other Federal provisions implemented by this final rule, and the BRFAs, are intended to conserve Hawaiian bottomfish over the long term.

*Comment 24:* Non-commercial bag limits should be eliminated because non-commercial fishermen are already limited by the size of their vessels, storage capacity, and weather.

*Response:* This final rule implements Federal non-commercial bag limits that complement existing State bag limits. NMFS intends to repeal the Federal non-commercial bag limits once the data collected from the non-commercial bottomfish fishery are determined to be adequate to include in the annual TAC calculation.

*Comment 25:* The non-commercial permit and reporting requirement should be on a one-year trial basis. If at the end of one year, non-commercial fishermen are significantly contributing

to the bottomfish catch the permit and reporting would continue. If not, it could be eliminated.

*Response:* NMFS and the Council will monitor the fishery and evaluate the effectiveness of these measures in ending and preventing overfishing of Hawaiian bottomfish. The Council and NMFS may consider adjustments to the fishery management regime in the future, if necessary.

*Comment 26:* Reporting requirements for non-commercial fishermen should be kept simple to reduce the burden to fishermen.

*Response:* The reporting forms have been designed to record only the basic information required to effectively monitor the fishery. The forms will come with instructions and contact information for further questions about the forms. Comments on the form and the reporting burden can be sent to William L. Robinson (see **ADDRESSES**) and by email to *David_Rostker@omb.eop.gov* or by fax to 202–395–7285.

*Comment 27:* Clarify how the permit requirement and associated fee differ from the recreational fishermen registry created under the reauthorized Magnuson-Stevens Act and which is not able to charge a fee until 2011.

*Response:* This final rule implements non-commercial bottomfish permits and data collection under section 303 of the Magnuson-Stevens Act, specifically to collect fishery information to be used by managers to end overfishing of bottomfish in Hawaii. That section of the Act authorizes the collection of fees for the issuance of such permits. The recreational fishermen registry is authorized under Section 401 of the Magnuson-Stevens Act as a national registration program for recreational fishing in all regions (not specifically the Hawaiian bottomfish fishery) and the Magnuson-Stevens Act authorizes the collection of fees for that program beginning in 2011.

*Comment 28:* The non-commercial fee is higher than the commercial fee which might make fishermen more inclined to get the commercial permit.

*Response:* Holding either a Federal non-commercial permit or State CML satisfies the requirements of this final rule. The fee for the non-commercial permit has not yet been determined, as it is dependent on the number of permits issued. The preamble to the proposed rule noted that the fee would not exceed $80 per person, and it will probably be in the range of $25–40.

*Comment 29:* Federal reporting requirements will require fishermen to report all BMUS while the State of Hawaii requires reporting of Deep 7 species only. These inconsistent requirements make reporting confusing to fishermen who fish in both State and Federal waters.

*Response:* The State requires commercial fishermen (State CML holders) to report all species caught, and NMFS believes that the collection of information regarding all BMUS is essential to understand the combined impact of commercial and non-commercial fishing on Hawaiian bottomfish stocks.

*Comment 30:* If fishermen report interactions with protected species, as indicated on the reporting requirements, they may be held liable under the Endangered Species Act (ESA).

*Response:* NMFS completed a biological opinion under section 7 of the ESA that analyzed the impacts of implementing this final rule on endangered and threatened species. That opinion, dated March 18, 2008, concluded that this action is not likely to adversely affect the Hawaiian monk seal, and is likely to adversely affect the endangered/threatened green sea turtle. The incidental take of up to two green sea turtles per year is authorized for the Hawaii bottomfish fishery. The Federal logbooks will provide fishermen the opportunity to report protected species interactions, including sea turtles and marine mammals. NOAA OLE will investigate reported interactions on a case-by-case basis to ascertain the nature of the interaction and whether or not it was authorized.

*Comment 31:* The preamble of the proposed rule noted that the non-commercial bag limit would be eliminated in 2008, but that is not reflected in the regulatory text.

*Response:* The preamble to the proposed rule inadvertently indicated that the bag limits would be repealed in 2008, but should have read that NMFS will repeal the Federal non-commercial bag limits once the data collected from the non-commercial bottomfish fishery are determined to be adequate to include in the annual TAC calculation. The final rule clarifies this point.

*Comment 32:* It is unrealistic to believe that fish suffering from barotrauma can be resuscitated.

*Response:* Reduction of bottomfish barotrauma is possible with correct handling procedures, and NMFS plans to work with the State and Council to provide information to fishermen on effective ways to handle fish to reduce barotrauma.

*Comment 33:* Fishermen will not honestly report their non-target fish and bycatch for fear of reaching the TAC sooner.

*Response:* The TAC will be calculated only for the reported catch of Deep 7 bottomfish species, and once the TAC is reached, only the fishery for Deep 7 will be closed; fishing for other species may continue. Information on other bottomfish and pelagic species caught will provide NMFS and the Council with a comprehensive picture of the non-commercial bottomfish fishery, its interplay with related fisheries, and the biological, social, and economic impacts of fishermen switching among gear types and target species. Honest reporting, and effective enforcement of reporting requirements, is essential to the calculation of an effective TAC, and if the bottomfish stocks continue to experience overfishing, more restrictive management measures may become necessary in the future.

*Comment 34:* The regulations do not take into account the fact that during the closed season fishing supply stores, many of which are ''mom and pop'' operations, and the fish auction will lose revenues as the market shifts to imports.

*Response:* NMFS recognizes that certain businesses will be affected by this final rule related to effort restrictions in the bottomfish fishery, and may experience a temporary downturn in revenues. This downturn may be offset, however, by increased fishing activity for non-Deep 7 bottomfish, and in the pelagic and other fisheries. In addition, the closed season is scheduled to take place during the months of historically low bottomfish fishing effort and lower demand. The expected result of this management regime is to increase the productivity of the bottomfish fishery in the long run which will lead to an increase in profitability to vessels, fishing gear suppliers, vessel support operations, fish markets, food and fuel providers, and other related businesses.

*Comment 35:* The requirement for holders of the non-commercial permit to report all catch, regardless of whether it is caught within Federal or State waters, exceeds the jurisdiction of the Federal Government.

*Response:* Hawaiian bottomfish stocks and habitat are shared between State and Federal jurisdictions. As such, in response to the demonstrated conservation and management need to end overfishing of Hawaiian bottomfish stocks, it is essential that comprehensive information about the fishery be collected to effectively implement this rule.

*Comment 36:* The wording of the regulations makes it sound as if the State CML can permit non-commercial

fishing. This language needs clarification.

*Response:* Holding a State CML satisfies the permitting requirements for non-commercial bottomfish fishing in Federal waters. However, commercial fishing in Federal or State waters requires a State CML. With regard to reporting, if the vessel operator holds a non-commercial permit, the operator must report the entire catch and effort for the fishing day to NMFS. If the vessel operator holds a State CML, the operator must report the entire catch and effort for the fishing day to the State. The compliance guide and Federal non-commercial logbook instructions will provide further direction to assist fishermen with these reporting requirements.

*Comment 37:* Section 665.72(e) needs to be clarified by removing the word ''commercially'' because the closure applied to both commercial and non-commercial fishing.

*Response:* The final rule clarifies that when the fishery is closed, Deep 7 bottomfish may not be harvested or sold, except as otherwise authorized by law.

*Comment 38:* Explain why the rule requires reporting of all catch by holders of the non-commercial bottomfish permit, but the permit is only required for those that fish for BMUS.

*Response:* The requirement to report all catch from bottomfish trips will provide a complete profile of the non-commercial bottomfish fishery, its interplay with related fisheries (e.g., troll and handline fishing for tunas and related species), and the biological, social, and economic effects of fishermen switching among gear types and target species.

*Comment 39:* Explain why it would be unlawful to fail to report relative to § 665.3.

*Response:* Holding either a Federal non-commercial permit or State CML satisfies the permit requirements of this final rule. Section 665.3 reinforces the existing requirement for State CML holders to report their catch and effort to the State, as required by applicable State law or regulation.

*Comment 40:* This final rule unfairly targets the bottomfish fishermen. The activities of divers, shore-casters and kayakers should also be regulated.

*Response:* The final rule applies only to vessel-based bottomfish fishing in U.S. EEZ waters (3–200 nm offshore) with the objective to reduce bottomfish overfishing in the Hawaiian Archipelago. Divers, shore-casters and kayakers fish primarily in State waters (0–3 nm) and, as such, they are subject to State of Hawaii regulations including the BRFAs, gear restrictions, recreational bag limits, and commercial permits and reporting, as appropriate.

*Comment 41:* Stock assessments should be based on scientific information.

*Response:* Fishery scientists have conducted stock assessments using a combination of the State of Hawaii commercial fishing database and fishery-independent information. The most recent stock assessment indicated that the current level of bottomfish fishing effort in the main Hawaiian Islands is not sustainable in the long term, and must be reduced by 24 percent in 2008. State and PIFSC scientists will continue to monitor the bottomfish fishery through commercial information reported by State CML holders. Also, NMFS independent research and information reported by non-commercial bottomfish permit holders will be used by the Council and NMFS to set the annual bottomfish TAC. Bottomfish stock assessments and TAC are based on the best scientific information available.

*Comment 42:* The proposed regulations are redundant to existing State of Hawaii requirements, adding unnecessary costs and paperwork burdens.

*Response:* Current State of Hawaii CML and data reporting only apply to commercial fishing. This final rule is intended to obtain information on the non-commercial bottomfish fishery in Hawaii. The Federal permit requirement is satisfied with a State CML, so the permit requirement is not redundant. A fee is required for a non-commercial permit and the fee amount is limited to the administrative cost to process the permit application. If the vessel operator holds a non-commercial permit, the operator must report the entire catch and effort for the fishing day to NMFS. If the vessel operator holds a State CML, the operator must report the entire catch and effort for the fishing day to the State. Thus, there is no redundant reporting requirement. Vessels that are marked according to State requirements are exempt from Federal vessel identification requirements, so there is no redundancy in the vessel identification requirements. The Federal non-commercial bag limit of five fish is consistent with existing State requirements.

*Comment 43:* Regarding the Federal non-commercial bag limits, it would be difficult to determine how many fish are caught in State waters and how many are caught in Federal waters; the rule is unclear whether both bag limits would apply, i.e., five State and five Federal.

*Response:* The holder of a Federal non-commercial bottomfish permit is limited to five Deep 7 fish, regardless of where the fish are caught. The State of Hawaii recreational bag limit of five fish applies to other non-commercial fishermen. Thus, a limit of five bottomfish applies to all non-commercial fishing.

*Comment 44:* Relatively few dedicated commercial fishermen catch the majority of bottomfish, so by not limiting commercial bottomfish fishermen to a specific amount of fish is counter-productive to ending overfishing of bottomfish in the MHI.

*Response:* The final rule limits catches by commercial fishermen through an annual TAC. When the TAC is reached in any given year, both commercial and non-commercial fisheries for Deep 7 bottomfish are closed for the remainder of the fishing year.

*Comment 45:* A comprehensive review of alternative measures to maintain an adequate level of bottomfish stock needs to be done before changes are made to the regulations.

*Response:* The Council, in its FSEIS, analyzed the potential impacts of a range of management alternatives related to ending overfishing in the MHI. The preferred alternative was chosen because it reduces fishing effort by the required amount to end overfishing, provides a mechanism for data collection from the non-commercial sector, and allows for the establishment of a total allowable catch limit that can be adjusted each year based on stock assessments. Copies the FSEIS are available from the Council (see **ADDRESSES**).

## Changes from the Proposed Rule

In this final rule, several changes were made from the proposed rule to provide clarification of the requirements. The proposed rule would have established an expiration date of August 31 for Main Hawaiian Islands non-commercial bottomfish permits. NMFS notes that there is no administrative or management necessity or advantage to setting a specific permit expiration date. NMFS estimates that it will process up to 5,000 applications per year, and a specific expiration date would disproportionately concentrate administrative burdens to certain times of the year, potentially causing significant and unacceptable delays in the processing of permits. Authorizing permits to be valid for one year from the date of issuance will allow for operational efficiency on a long-term basis. The final rule clarifies that

permits are valid for the time specified on the permit, i.e., one year from the date of issuance, and also clarifies that, while 15 CFR 904 relates to permit revocation and suspension, such revocations and suspensions may also occur as other types of administrative actions.

The requirements for the new Main Hawaiian Islands non-commercial permit include provisions regarding catch reporting, bag limits, etc. The proposed rule was unclear about ''mixed'' fishing trips, where some fishermen on the trip hold Federal Main Hawaiian Islands non-commercial permits, and some hold State of Hawaii Commercial Marine Licenses. The State of Hawaii defines these mixed trips to be non-commercial. To be consistent with State rules, the final rule clarifies that, if any participant on the trip is non-commercial, then the entire trip is non-commercial, and participants are subject to non-commercial requirements, including reporting and bag limits.

The proposed rule would require all non-commercial fishermen on a fishing trip to have either a Main Hawaiian Islands non-commercial permit or a State CML, ostensibly including charter boat patrons. The State of Hawaii requires any person providing vessel charter services in the State for the taking of marine life in or outside of the State to obtain a State CML. The charter operator does not need to sell any fish--merely offering the charter service triggers the requirement. Licensed charter vessel operators are also required to submit State commercial fishing reports in which all the effort and catch on the trips are to be reported, including catch by patrons. Only two percent of charter fishing vessels statewide use some bottomfish fishing gear; charter fishing is primarily pelagic fishing. The few vessels that occasionally offer charter bottomfish fishing usually target inshore reef slope or shallow bottomfish species, not the Deep 7 species. Additionally, most studies indicate that the majority of charter patrons are out-of-state visitors, and not residents, and it would be difficult for most visitors to apply for and obtain a Federal permit during the short time of their visit. The final rule will clarify that customers on bottomfish charter fishing trips are exempt from the non-commercial bottomfish permit requirement where the charter vessel operator is compliant with state laws and regulations. Additionally, since charter boat customers are considered to be non-commercial fishermen, and non-commercial fishermen are subject to bag limits under State requirements, this final rule requires Deep 7 bottomfish charter boat customers to comply with bag limits when fishing for Deep 7.

The proposed rule would require operators of vessels registered for use under Main Hawaiian Islands non-commercial bottomfish permits to report the catch, effort, and other data from each fishing trip to NMFS. Additionally, the State of Hawaii requires State CML holders to report their catch and effort to the State. On mixed trips, where some fishermen on the trip hold Federal non-commercial permits, and some hold State CMLs, there is a potential for double-reporting of the catch because both permit holders are required to report but to different agencies. No change will be made to the final rule, but the compliance guide and the Federal non-commercial logsheet instructions will clarify that non-commercial vessel operators need to report only the catch made by holders of Main Hawaiian Islands non-commercial bottomfish permits, and not that of the holders of State CMLs.

The implementation of the new Main Hawaiian Islands non-commercial permit creates a link to the Federal vessel identification requirement in § 665.16 that requires Federal permit holders to mark their vessels in a specific way for aerial and at-sea identification purposes. The existing Federal vessel identification requirements were created for the larger commercial fishing vessel to assist in aerial and at-sea enforcement of fishing regulations. Current State-registered bottomfish vessels are marked with an official HA number, with the addition of the letters ''BF,'' but the typical Hawaii-based non-commercial bottomfish vessel is not large enough to have the superstructure or deckhouse to support Federal vessel identification markings. Also, the bottomfish closed season and other restrictions for bottomfish are specific to Deep 7 species, not all bottomfish fishing. Enforcement of and compliance with this final rule are best addressed dockside, not at sea or from the air, so large lettering of the vessel's official number is not essential. Furthermore, imposing on the public a duplicative Federal vessel marking (collection-of-information) requirement with existing State's requirement is inconsistent with the purpose of the Paperwork Reduction Act. The final rule will clarify that those non-commercial bottomfish vessels that are in compliance with state bottomfish vessel registration and marking requirements are exempt from the Federal vessel identification requirements.

The Magunson Act authorizes NMFS to collect fees for all permits. The preamble to the proposed rule noted that fees would be collected for Main Hawaiian Islands non-commercial bottomfish permits, but the regulatory text was not included. The final rule clarifies that fees will be charged for Main Hawaiian Islands non-commercial bottomfish permits, and that the fees are non-refundable and are collected to offset the administrative costs associated with issuing the permits.

The proposed rule would have established a prohibition against owning a fishing vessel that participates in non-commercial bottomfish fishing without a Main Hawaiian Islands non-commercial bottomfish permit or State CML. The proposed rule neglected, however, to create the related requirement, so the final rule creates the requirement.

The final rule adds the definition of State of Hawaii Commercial Marine License, which was omitted in the proposed rule, and revises the definition of Main Hawaiian Islands Non-Commercial Bottomfish Fishing Permit to clarify that the permit is required to own or fish from a vessel that is used in any non-commercial vessel-based fishing, landing, or transshipment of any BMUS in the Main Hawaiian Islands Management Subarea.

The final rule clarifies that both the vessel owner and vessel operator share responsibility for submitting required logbook information for each day of the fishing trip.

The final rule also clarifies the procedures used by the Regional Administrator (RA) in notifying the public of the projected closure date for the fishery. The RA will file an official notice of the closure with the Office of the federal Register at least 14 days in advance of the projected closure date.

The final rule also clarifies that, in addition to the prohibition on fishing for Deep 7 bottomfish after the TAC is reached, Deep 7 bottomfish species may not be sold or offered for sale after the TAC is reached unless otherwise legally harvested.

The final rule also reorders the numbering of new §§ 665.73 (bag limits) and 665.74 (closed season). Because the closed season will be effective only in 2008 and repealed afterward, renumbering the sections now will preclude the need to renumber them later.

## Classification

The NOAA Assistant Administrator for Fisheries (AA) determined that Amendment 14 is necessary for the conservation and management of the

affected fisheries, and that the amendment is consistent with the Magnuson-Stevens Act and other applicable laws.

A final environmental impact statement dated December 19, 2007, was prepared for this final rule. The FSEIS was filed with the Environmental Protection Agency on January 4, 2008. A notice of availability was published on January 11, 2008 (73 FR 2027). In approving Amendment 14 on March 18, 2008, NMFS issued a Record of Decision (ROD) identifying the selected alternative. A copy of the ROD is available from William L. Robinson (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Consistent with section 604 of the Regulatory Flexibility Act, NMFS prepared a final regulatory flexibility analysis (FRFA) for Amendment 14, as follows:

This FRFA incorporates the IRFA prepared for Amendment 14. The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here. A statement of the need for, and objectives of, the rule is provided in the preambles to the proposed rule and to this final rule, and is not repeated here.

There were two comments on the IRFA, and NMFS responds as follows:

*Comment 1:* The statement that ''There are no reporting, recordkeeping, or other compliance requirements for commercial vessels in the proposed rule'' seems out of place, given that all vessels must report their catch toward the TAC.

*Response:* The keyword in that phrase is ''commercial''. This rule does not create new requirements for commercial vessels or operators. Under current State of Hawaii regulations, all commercial fishermen are required to have a State CML and report their catch to the State, and are subject to vessel-marking requirements. In monitoring and calculating the TAC, the commercial information collected by the State will be incorporated with the non-commercial data collected under the requirements in this rule.

*Comment 2:* The statement that vessels in the bottomfish fishery ''are not independently-owned and operated'' is inaccurate, as many individuals own boats and fish from their own boats.

*Response:* The proposed rule contained a typographic error. The full sentence should have read ''All vessels are considered to be small entities under the Small Business Administration definition of a small entity, i.e., they are engaged in the business of fish harvesting, are independently-owned and operated, are not dominant in their field of operation, and have annual gross receipts not in excess of $4 million.''

Steps Taken to Minimize Impacts

The Magnuson-Stevens Act requirements to prevent overfishing preclude allowing a TAC to be set above a level of overfishing in order to minimize impacts to small entities. Economic losses to the commercial sector could be mitigated somewhat by increases to available harvest from improvements to the bottomfish stock and economic benefits derived from other fisheries or other uses of fishing vessels (opportunity costs), to the extent they exist. Given that there could be sizable adverse economic impacts to the commercial fishery resulting from one TAC for commercial and non-commercial sectors, NMFS will complete a Regulatory Flexibility Analysis to determine the economic impacts to commercial vessels when non-commercial landings are estimated and the 2008–09 TAC is specified.

Additionally, by the time the TAC is specified, NMFS should have information on the State of Hawaii's intentions regarding possible changes to the State bag limit requirements. Since the universe of affected entities does not include non-commercial fishermen, economic impacts to this group are not considered under this FRFA. However, those impacts were analyzed by the Council as part of the Regulatory Impact Review to assess regional and national economic impacts.

**Description and Estimate of the Number of Small Entities to Which the Rule Applies**

Approximately 380 vessels were engaged in the harvest of bottomfish based on 2000–03 data. The aggregate gross receipts for these vessels in the bottomfish fishery were $1.47 million with average gross receipts per vessel of $3,870 annually. All vessels are considered to be small entities under the Small Business Administration definition of a small entity, i.e., they are engaged in the business of fish harvesting, are independently-owned or operated, are not dominant in its field of operation, and have annual gross receipts not in excess of $4 million. Therefore, there are no disproportionate economic impacts between large and small entities. Furthermore, there are no disproportionate economic impacts among vessels based on geographic location, gear, or vessel size resulting from publication of this final rule.

**Small Entity Compliance Guide**

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all vessels that have historic landings in this fishery. In addition, copies of this final rule and guide are available from the Regional Administrator (see **ADDRESSES**) and are also available at the following web site: *fpir.nmfs.noaa.gov*.

This final rule contains collection-of-information requirements subject to the PRA. These requirements have not yet been approved, but OMB approval is expected in the near future. NMFS will publish a notice when these requirements are cleared by OMB and are, therefore, effective. The public reporting burden for these requirements is estimated to be 30 minutes for a new permit application, and 20 minutes for completing a fishing logbook each day.

NMFS estimates that 800–5,000 non-commercial fishermen will request permits. Thus, the collection of information burden estimate for permit applications is 400–2,500 hours per year. Estimating that between 800–1,800 vessels would make 10–50 trips per year, 8,000–90,000 logbooks could be generated each year. Thus, the total collection of information burden estimate for fishing data reporting would be between 2,664 to 29,970 hours per year.

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to William L. Robinson, NMFS PIR (see **ADDRESSES**), or by e-mail to *David_Rostker@omb.eop.gov* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

A consultation under section 7 of the Endangered Species Act was conducted for Amendment 14. In a biological opinion dated March 18, 2008, the Regional Administrator determined that fishing activities conducted under Amendment 14 and its implementing regulations are not likely to jeopardize the continued existence of any endangered or threatened species.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30–day delay in effective date to implement these measures in a timely manner. The Council and NMFS completed FMP Amendment 14 and the FSEIS in December 2007, and the proposed rule was published in February 2008. Public comments on the proposed rule were accepted until March 7, and by the time this final rule was prepared, monitoring of Hawaii bottomfish landings since the beginning of the 2007–08 fishing year (i.e., October 2007) indicates that the proposed TAC of 178,000 lb will be reached on or prior to April 17, according to NMFS scientists. This is a result of higher than anticipated landings of Hawaii bottomfish during the months of February and March 2008. This necessitates closure of the fishery before the scheduled May 1

beginning of the 2008 closed season. If the fishery is not closed soon, the recommended 2007–08 TAC would likely be further exceeded, and overfishing of Hawaii bottomfish would continue, and an even lower quota would be required to reduce fishing mortality for fishing year 2008–09 to adequately end the overfishing, resulting in greater negative impacts on the fishery. Therefore, the rule must be effective upon the date of filing with the Office of the **Federal Register**.

**List of Subjects in 50 CFR Part 665**

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Hawaiian natives, Northern Mariana Islands, Pacific Remote Island Areas, Reporting and recordkeeping requirements.

Dated: March 31, 2008.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 665 is amended as follows:

## PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for part 665 continues to read as follows:

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

■ 2. In subpart A, add a new § 665.4 to read as follows:

### § 665.4 Licensing and registration.

Any person who is required to do so by applicable state law or regulation must comply with licensing and registration requirements in the exact manner required by applicable state law or regulation.

■ 3. In § 665.12, revise the definitions of ''Commercial fishing'', ''Fishing year'', and ''Trap'', and add the definitions for ''Hawaii Restricted Bottomfish Species Fishing Year 2007–08'', ''Hawaii Restricted Bottomfish Species Fishing Year 2008–09 and After'', ''Main Hawaiian Islands non-commercial bottomfish permit'', ''Non-commercial fishing'', and ''State of Hawaii Commercial Marine License'' in alphabetical order to read as follows:

### § 665.12 Definitions.

* * * * *

*Commercial fishing* means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter, or trade. All lobster fishing in Crustaceans Permit Area 1 is considered commercial fishing.

* * * * *

*Fishing year* means the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31, with the exception of fishing for Hawaii Restricted Bottomfish Species.

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*Hawaii restricted bottomfish species fishing year 2007–08* means the year beginning at 0001 HST on October 1, 2007, and ending at 2400 HST on April 30, 2008.

*Hawaii restricted bottomfish species fishing year 2008–09 and After* means the year beginning at 0001 HST on September 1 and ending at 2400 HST on August 31 of the next calendar year.

* * * * *

*Main Hawaiian Islands Non-Commercial Bottomfish Permit* means the permit required by § 665.61(a)(4) to own or fish from a vessel that is used in any non-commercial vessel-based fishing, landing, or transshipment of any bottomfish management unit species in the Main Hawaiian Islands Management Subarea.

*Non-commercial fishing* means fishing that does not meet the definition of commercial fishing.

* * * * *

*State of Hawaii Commercial Marine License* means the license required by the State of Hawaii for anyone to take marine life for commercial purposes (also known as the commercial fishing license).

* * * * *

*Trap* means a box-like device used for catching and holding lobsters or fish.

* * * * *

■ 4. In § 665.13, revise paragraphs (f)(2) and (g) to read as follows:

### § 665.13 Permits and fees.

(f) * * *

(2) PIRO will charge a non-refundable processing fee for each application (including transfers and renewals) for the following permits. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, for determining the administrative costs of each special product or service incurred in processing the permit. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude the issuance, transfer or renewal of any of these permits:

(i) Hawaii longline limited access permit;

(ii) Mau Zone limited access permit;

(iii) Coral reef ecosystem special permit;

(iv) American Samoa longline limited access permit; and

(v) Main Hawaiian Islands non-commercial bottomfish permit.

* * * * *

(g) *Expiration.* Permits issued under subparts C, D, E, F, and G of this part are valid for the period specified on the permit unless revoked, suspended, transferred, or modified.

* * * * *

■ 5. In § 665.14, revise paragraphs (a) to read as follows:

### § 665.14 Reporting and recordkeeping.

(a) *Fishing record forms.* (1) *Applicability.* The operator of any fishing vessel subject to the requirements of §§ 665.21, 665.41, 665.61(a)(2), 665.61(a)(3), 665.61(a)(4), 665.81, or 665.602 must maintain on board the vessel an accurate and complete record of catch, effort, and other data on paper report forms provided by the Regional Administrator, or electronically as specified and approved by the Regional Administrator. All information specified by the Regional Administrator must be recorded on paper or electronically within 24 hours after the completion of each fishing day. The logbook information, reported on paper or electronically, for each day of the fishing trip must be signed and dated or otherwise authenticated by the vessel operator in the manner determined by the Regional Administrator, and be submitted or transmitted via an approved method as specified by the Regional Administrator, and as required by this paragraph (a).

(2) *Timeliness of submission.* (i) If fishing was authorized under a permit pursuant to §§ 665.21, 665.41, 665.61(a)(1), 665.61(a)(3), or 665.81 the vessel operator must submit the original logbook form for each day of the fishing trip to the Regional Administrator within 72 hours of the end of each fishing trip, except as allowed in paragraph (iii) of this section.

(ii) If fishing was authorized under a permit pursuant to § 665.61(a)(4) the vessel operator or vessel owner must submit the original logbook form for each day of the fishing trip to the Regional Administrator within 72 hours of the end of each fishing trip.

(iii) If fishing was authorized under a PRIA bottomfish permit pursuant to § 665.61(a)(2), PRIA pelagic troll and handline permit pursuant to § 665.21(f), crustaceans fishing permit for the PRIA (Permit Area 4) pursuant to § 665.41, or a precious corals fishing permit for Permit Area X-P-PI pursuant to § 665.81, the original logbook form for each day of fishing within the PRIA EEZ waters must be submitted to the Regional

Administrator within 30 days of the end of each fishing trip.

(iv) If fishing was authorized under a permit pursuant to § 665.602, the original logbook information for each day of fishing must be submitted to the Regional Administrator within 30 days of the end of each fishing trip.

* * * * *

■ 6. In § 665.16, revise paragraph (a) and add new paragraph (e) to read as follows:

**§ 665.16 Vessel identification.**

(a) Each fishing vessel subject to this subpart, except those identified in paragraph (e) of this section, must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck, so as to be visible from enforcement vessels and aircraft.

* * * * *

(e) The following fishing vessels are exempt from the vessel identification requirements in this section:

(1) A vessel registered for use under a Main Hawaiian Islands non-commercial bottomfish permit that is in compliance with State of Hawaii bottomfish vessel registration and marking requirements.

(2) [Reserved]

■ 7. In § 665.61, revise paragraph (a) to read as follows:

**§ 665.61 Permits.**

(a) *Applicability.* (1) *Northwestern Hawaiian Islands (NWHI).* The owner of any vessel used to fish for, land, or transship bottomfish management unit species shoreward of the outer boundary of the Northwestern Hawaiian Islands subarea must have a permit issued under this section, and the permit must be registered for use with that vessel. The PIRO will not register a single vessel for use with a Ho omalu Zone permit and a Mau Zone permit at the same time. Mau Zone permits issued before June 14, 1999, become invalid June 14, 1999, except that a permit issued to a person who submitted a timely application under paragraph (b)(3) of this section is valid until the permit holder either receives a Mau Zone limited entry permit or until final agency action is taken on the permit holder's application. The Ho omalu Zone and the Mau Zone limited entry systems described in this section are subject to abolition, modification, or additional effort limitation programs.

(2) *Pacific Remote Island Areas (PRIA).* The owner of any vessel used to fish for, land, or transship bottomfish management unit species shoreward of the outer boundary of the Pacific Remote Island Areas subarea must have a permit issued under this section, and the permit must be registered for use with that vessel.

(3) *Guam large vessel.* The owner of any large vessel used to fish for, land, or transship bottomfish management unit species shoreward of the outer boundary of the Guam subarea must have a permit issued under this section, and the permit must be registered for use with that vessel.

(4) *Main Hawaiian Islands non-commercial.* The owner of a vessel that is used for and any person who participates in non-commercial, vessel-based fishing, landing, or transshipment of bottomfish management unit species in the Main Hawaiian Islands Management Subarea is required to obtain a Main Hawaiian Islands non-commercial bottomfish permit or a State of Hawaii Commercial Marine License. If one or more persons on a vessel-based bottomfish fishing trip holds a Main Hawaiian Islands non-commercial permit, then the entire trip is considered non-commercial, and not commercial. However, if any commercial fishing occurs during or as a result of a vessel-based fishing trip, then the fishing trip is considered commercial, and not non-commercial. Charter boat customers are not subject to the requirements of the section.

* * * * *

■ 8. In § 665.62, add new paragraphs (j) through (n), as follows:

**§ 665.62 Prohibitions.**

* * * * *

(j) Falsify or fail to make or file reports of all fishing activities shoreward of outer boundary of the Main Hawaiian Islands Management Subarea, in violation of §§ 665.3 or 665.14(a).

(k) Own a vessel or fish from a vessel that is used to fish non-commercially for any bottomfish management unit species in the Main Hawaiian Islands Management Subarea without either a Main Hawaiian Islands non-commercial bottomfish permit or a State of Hawaii Commercial Marine License, in violation of §§ 665.4 or 665.61(a)(4).

(l) Fish for or possess any Hawaii Restricted Bottomfish Species as specified in § 665.71, in the Main Hawaiian Islands Management Subarea after a closure of the fishery, in violation of §§ 665.72 or 665.74.

(m) Sell or offer for sale any Hawaii Restricted Bottomfish Species, as specified in § 665.71, after a closure of the fishery, in violation of §§ 665.72 or 665.74.

(n) Harvest, possess, or land more than a total of five fish (all species combined) identified as Hawaii Restricted Bottomfish Species in § 665.71 from a vessel in the Main Hawaiian Islands Management Subarea, while holding a Main Hawaiian Islands non-commercial bottomfish permit, or while participating as a charter boat customer, in violation of § 665.73.

■ 9. In subpart E, add a new § 665.71 to read as follows:

**§ 665.71 Hawaii restricted bottomfish species.**

Hawaii restricted bottomfish species means the following species:

| Common Name | Common Name | Scientific Name |
|---|---|---|
| Silver jaw jobfish | Lehi | *Aphareus rutilans* |
| Squirrelfish snapper | Ehu | *Etelis carbunculus* |
| Longtail snapper | Onaga | *Etelis coruscans* |
| Pink snapper | Opakapaka | *Pristipomoides filamentosus* |
| Snapper | Kalekale | *Pristipomoides sieboldii* |
| Snapper | Gindai | *Pristipomoides zonatus* |
| Sea bass | Hapu'upu'u | *Epinephelus quernus* |

■ 10. In subpart E, add a new § 665.72 to read as follows:

**§ 665.72 Total Allowable Catch (TAC) limit.**

(a) TAC limits will be set annually for the fishing year by NMFS, as recommended by the Council, based on the best available scientific, commercial, and other information, and taking into account the associated risk of overfishing.

(b) The Regional Administrator shall publish a notice indicating the annual Total Allowable Catch limit in the **Federal Register** by August 31 of each year, and shall use other means to notify permit holders of the TAC limit for the year.

(c) When the TAC limit specified in this section is projected to be reached based on analyses of available information, the Regional Administrator shall publish a notice to that effect in the **Federal Register** and shall use other means to notify permit holders. The notice will include an advisement that the fishery will be closed beginning at a specified date, which is not earlier than 14 days after the date of filing the closure notice for public inspection at the Office of the **Federal Register**, until the end of the fishing year in which the TAC is reached.

(d) On and after the date specified in § 665.72(c), no person may fish for or possess any Hawaii Restricted Bottomfish Species as specified in § 665.71 in the Main Hawaiian Islands Management Subarea, except as otherwise allowed by law.

(e) On and after the date specified in § 665.72(c), no person may sell or offer for sale Hawaii Restricted Bottomfish Species as specified in § 665.71, except as otherwise authorized by law.

(f) Fishing for, and the resultant possession or sale of, Hawaii Restricted Bottomfish Species by vessels legally registered to Mau Zone, Ho omalu Zone, or PRIA bottomfish fishing permits and conducted in compliance with all other laws and regulations, is exempted from this section.

(g) The Hawaii restricted bottomfish species TAC limit for the 2007–08 fishing year is 178,000 lb (80,740 kg).

■ 11. Under subpart E, add a new § 665.73 to read as follows:

**§ 665.73 Non-commercial bag limits.**

No more than a total of five fish (all species combined) identified as Hawaii Restricted Bottomfish Species as specified in § 665.71, may be harvested, possessed, or landed by any individual participating in a non-commercial vessel-based fishing trip in the Main Hawaiian Islands Management Subarea. Charter boat customers are also subject to the bag limit.

■ 12. In subpart E, add a new § 665.74 to read as follows:

**§ 665.74 Closed season.**

(a) All fishing for, or possession of, any Hawaii Restricted Bottomfish Species as specified in § 665.71, is prohibited in the Main Hawaiian Islands Management Subarea during May 1, 2008, through August 31, 2008, inclusive. All such species possessed in the Main Hawaiian Islands Management Subarea are presumed to have been taken and retained from that Subarea, unless otherwise demonstrated by the person in possession of those species.

(b) Hawaii Restricted Bottomfish Species, as specified in § 665.71, may not be sold or offered for sale during May 1, 2008, through August 31, 2008, inclusive, except as otherwise authorized by law.

(c) Fishing for, and the resultant possession or sale of, Hawaii Restricted Bottomfish Species by vessels legally registered to Mau Zone, Ho'omalu Zone, or PRIA bottomfish fishing permits and conducted in compliance with all other laws and regulations, is exempted from paragraphs (a) and (b).

[FR Doc. 08–1093 Filed 4–1–08; 11:30 am]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 73, No. 66
Friday, April 4, 2008

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2008–0264; Directorate Identifier 2008–NE–07–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Honeywell International Inc. TFE731–4, –4R, –5, –5AR, –5BR, and –5R Series Turbofan Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for Honeywell International Inc. TFE731–4, –4R, –5, –5AR, –5BR, and –5R series turbofan engines, with interstage turbine transition (ITT) duct, part number (P/N) 3075292–1; 3075292–3; 3074766–1; 3077063–1; 3075655–1; 3075655–2; 30756599–1; or 30756599–3, installed. This proposed AD would require replacing the affected ITT duct with a serviceable and redesigned ITT duct. This proposed AD results from reports of 49 low pressure turbine (LPT) blade separations. Six of those events resulted in circumferential failure of the LPT2 or LPT3 nozzle assembly, leading to deformation of the ITT duct and uncontainment of the turbine blades and fragments of the LPT nozzle assembly. We are proposing this AD to prevent uncontainment of turbine blades and fragments of the LPT nozzle assembly, which could result in damage to the airplane.

**DATES:** We must receive any comments on this proposed AD by June 3, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

You can get the service information identified in this proposed AD from Honeywell Engines and Systems Technical Publications and Distribution, M/S 2101–201, P.O. Box 52170, Phoenix, AZ 85072–2170, telephone: (602) 365–2493 (General Aviation), (602) 365–5535 (Commercial Aviation), fax: (602) 365–5577 (General Aviation and Commercial Aviation).

**FOR FURTHER INFORMATION CONTACT:** Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; e-mail: *joseph.costa@faa.gov*; telephone: (562) 627–5246; fax: (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2008–0264; Directorate Identifier 2008–NE–07–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed 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.

### Discussion

In July 2006, we started receiving reports of LPT blade separations, which resulted in circumferential failure of the LPT2 or LPT3 nozzle assembly. To date, we have received reports of 49 LPT blade separations of which 6 of those events caused spinning of the LPT2 or LPT3 nozzle assembly. The spinning can lead to deformation of the ITT duct and uncontainment of the turbine blades and fragments of the LPT nozzle assembly. This condition, if not corrected, could result in uncontainment of turbine blades and fragments of the LPT nozzle assembly, leading to damage to the airplane.

### FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require replacing the affected ITT duct with a serviceable and redesigned ITT duct at the next Major Periodic Inspection of the engine or at next access of the ITT duct, whichever occurs first, but not to exceed 2,600 hours time-in-service after the effective date of the proposed AD. The serviceable and redesigned ITT duct will minimize the potential for uncontained events.

### Costs of Compliance

We estimate that this proposed AD would affect 1,500 engines installed on airplanes of U.S. registry. We also estimate that it would take about 4 work-hours per engine to perform the

proposed actions, and that the average labor rate is $80 per work-hour. Reworked ITT ducts to the redesign would cost about $25,000 per engine. New ITT ducts that are redesigned would cost about $127,000. We estimate that 30 engines would require new ITT ducts. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $41,040,000.

### 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would 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 the proposed 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. Would 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 proposed AD. You may get a copy of this summary at the address listed under **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

**Honeywell International Inc. (formerly AlliedSignal Inc., formerly Garret Turbine Engine Company):** Docket No. FAA–2008–0264; Directorate Identifier 2008–NE–07–AD.

#### Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by June 3, 2008.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Honeywell International Inc. TFE731–4, –4R, –5, –5AR, –5BR, and –5R series turbofan engines, with interstage turbine transition (ITT) duct, part number (P/N) 3075292–1; 3075292–3; 3074766–1; 3077063–1; 3075655–1; 3075655–2; 30756599–1; or 30756599–3, installed. These engines are installed on, but not limited to, Avions Marcel Dassault Mystere-Falcon 50 series, Dassault-Aviation 20, 50, 900, MF900 series, Cessna Model 650, Cessna Citation VII, and Raytheon Corporate Jets (formerly British Aerospace) Hawker 800 and 850XP series airplanes.

#### Unsafe Condition

(d) This AD results from reports of 49 low pressure turbine (LPT) blade separations. Six of those events resulted in circumferential failure of the LPT2 or LPT3 nozzle assembly, leading to deformation of the ITT duct and uncontainment of the turbine blades and fragments of the LPT nozzle assembly. We are issuing this AD to prevent uncontainment of turbine blades and fragments of the LPT nozzle assembly, which could result in damage to the airplane.

#### Compliance

(e) You are responsible for having the actions required by this AD performed at the next Major Periodic Inspection of the engine or at next access of the ITT duct, whichever occurs first, but not to exceed 2,600 hours time-in-service after the effective date of this AD, unless the actions have already been done.

#### Replacement of the ITT Duct

(f) Replace the affected ITT ducts listed by part number in paragraph (c) of this AD, with a serviceable and redesigned ITT duct.

#### Definitions

(g) For the purpose of this AD, a serviceable and redesigned ITT duct is one not having a part number listed in this AD.

(h) For the purpose of this AD, next access of the ITT duct is when the ITT duct is removed from the engine.

#### Alternative Methods of Compliance

(i) The Manager, Los Angeles Aircraft 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

(j) Honeywell International Inc. Service Bulletin (SB) No. TFE731–72–3727, dated September 12, 2007, and SB No. TFE731–72–3728, dated September 12, 2007, pertain to the subject of this AD.

(k) Contact Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; e-mail: *joseph.costa@faa.gov*; telephone: (562) 627–5246; fax: (562) 627–5210, for more information about this AD.

Issued in Burlington, Massachusetts, on March 31, 2008.

**Peter A. White,**

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

[FR Doc. E8–6993 Filed 4–3–08; 8:45 am]

**BILLING CODE 4910–13–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

## 36 CFR Part 1280

**RIN 3095–AB33**

**[DOCKET NARA–08–0002]**

## Use of Meeting Rooms and Public Space

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Proposed rule.

**SUMMARY:** NARA proposes to amend its regulations on public use of the National Archives Building in Washington, DC, for meetings or special events. This proposal incorporates changes in available space as a result of the renovation of the National Archives Building by identifying the kinds of space available and procedures for requesting use. NARA also proposes to charge fees for the use of public areas in the National Archives Building in accordance with 44 U.S.C. 2903(b). The proposed rule affects the public.

**DATES:** Comments are due by June 3, 2008.

**ADDRESSES:** NARA invites interested persons to submit comments on this proposed rule. Comments may be

submitted by any of the following methods:

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

*Fax:* Submit comments by facsimile transmission to 301–837–0319.

*Mail:* Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Planning Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

*Hand Delivery or Courier:* Deliver comments to 8601 Adelphi Road, College Park, MD.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Davis Heaps at 301–837–1850, or fax at 301–837–0319.

**SUPPLEMENTARY INFORMATION:** Following is a discussion of substantive changes contained in this proposed rule. Additional nonsubstantive changes have been made and the proposed regulation has been written in plain language in accordance with the Presidential Memorandum of June 1, 1998, Plain Language in Government Writing.

**What changes have been made in this proposed rule?**

Most of the changes in this proposed rule are to 36 CFR part 1280, subpart D, ''What Rules Apply to Use Public Areas in the Washington, DC Area?'' We propose to change text in the regulations relating to the availability of public spaces in the National Archives Building for private, non-official use, including meetings and special events. The spaces available for such use have changed since the last revision to subpart D as a result of the building's renovation. The proposed changes to the regulations address some areas that have been relocated, expanded, and renamed. For example, the theater referenced in the current subpart D has been replaced elsewhere in the building by the larger William G. McGowan Theater. The Exhibition Hall has been replaced by renovated and newly constructed exhibit areas including: the renovated Rotunda for the Charters of Freedom (referred to as the Rotunda in these proposed regulations), displaying the Declaration of Independence, Constitution of the United States, and the Bill of Rights; the Rotunda Galleries; the Lawrence F. O'Brien Gallery; and, the Public Vaults. New ''Presidential Conference Rooms'' also have been built. Of these spaces, the McGowan Theater and the Presidential Conference Rooms may be reserved by groups for meetings and special events in accordance with our rules of use. Groups may also continue to reserve the Archivist's Reception Room, which is currently addressed in the subpart D regulations. We also propose to add information about fees we may charge under 44 U.S.C. 2903(b), which was enacted as part of the National Archives and Records Administration (NARA) Efficiency Act of 2004 (Public Law 108–383; 118 Stat. 2218–2220, Sec. 4(b)).

Other related changes in this proposed rule are:

- Removing the list of property under the control of the Archivist of the United States in § 1280.1 and, instead, providing a cross reference to the information in § 1280.2.
- Replacing the title ''Assistant Archivist for Administrative Services'' with ''Assistant Archivist for Administration'' in § 1280.34.
- Updating cross-referenced citations to the Code of Federal Regulations in §§ 1280.34(b) and 1280.48(f).
- Updating the address for the NARA Public Affairs Officer in § 1280.48(a).
- Adding the Charters Café as an available cafeteria in § 1280.68.
- Removing references in Subpart D to NA Form 16008, Application for Use of Space, because we receive most requests by telephone or fax. We continue to include the Office of Management and Budget (OMB) control number for the information collection.
- Adding tribal governments to the list of governments that may request to use NARA public spaces for official functions in new §§ 1280.70, 1280.84, and 1280.87.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because it affects individuals. This regulation does not have any federalism implications.

**List of Subjects in 36 CFR Part 1280**

Archives and records, Federal buildings and facilities.

For the reasons set forth in the preamble, NARA proposes to amend part 1280 of title 36, Code of Federal Regulations, as follows:

## PART 1280—USE OF NARA FACILITIES

1. The authority citation for part 1280 is revised to read as follows:

**Authority:** 44 U.S.C. 2102 notes, 2104(a), 2112, 2903.

2. Amend § 1280.1 by revising paragraph (a) to read as follows:

**§ 1280.1 What is the purpose of this part?**

(a) This part tells you what rules you must follow when you use property under the control of the Archivist of the United States (see § 1280.2 of this part).

* * * * *

**§ 1280.34 [Amended]**

3. Amend § 1280.34 as follows:

a. Remove ''Assistant Archivist for Administrative Services'' in paragraphs (b) and (c) and add in their place ''Assistant Archivist for Administration.''

b. Remove ''36 CFR 1254.20'' in the third sentence of paragraph (b) and add in its place ''36 CFR 1254.48.''

4. Amend § 1280.46 by revising paragraph (b)(3) to read as follows:

**§ 1280.46 What are the rules for filming, photographing, or videotaping on NARA property for personal use?**

* * * * *

(b) * * *

(3) You may not film, photograph, or videotape while on the interior steps or ramp leading to the Declaration of Independence, the Constitution, and the Bill of Rights in the Rotunda of the National Archives Building.

5. Amend § 1280.48 by revising paragraph (a) and amending paragraph (f) by revising the first sentence to read as follows:

**§ 1280.48 How do I apply to film, photograph, or videotape on NARA property for news purposes?**

(a) If you wish to film, photograph, or videotape for news purposes at the National Archives Building (as delineated in § 1280.2(a)), the National Archives at College Park, or the Washington National Records Center, you must request permission from the NARA Public Affairs Officer, 700 Pennsylvania Avenue, NW., Washington, DC 20408–0001. See also § 1280.42(b) for additional permissions relating to the Washington National Records Center.

* * * * *

(f) This section does not apply to you if you have permission to use your own microfilming equipment to film archival records and donated historical materials under the provisions of 36 CFR 1254.90 through 1254.110. * * *

6. Amend § 1280.52 by revising the third sentence of paragraph (a) as follows:

**§ 1280.52 What are the rules for filming, photographing, or videotaping on NARA property for news purposes?**

* * * * *

(a) * * * If the Public Affairs Officer approves your use of artificial lighting in the Rotunda, NARA will use

facsimiles in place of the Declaration of Independence, the Constitution, and the Bill of Rights. * * *

* * * * *

7. Revise § 1280.68 to read as follows:

**§ 1280.68 May I use the cafeterias?**

Yes, the Charters Café in the National Archives Building is normally open to the public Monday through Friday, 10 a.m. to 4 p.m. and the cafeteria at the National Archives at College Park is open to the public from 8 a.m. to 4 p.m.

8. Revise subpart D to read as follows:

**Subpart D—What Rules Apply To Use NARA Public Areas in the Washington, DC Area?**

**General**

Sec.
1280.70 When does NARA allow non-NARA groups to use the public areas of NARA property?
1280.71 What are the general rules for using NARA property in the Washington, DC area?
1280.72 What additional rules apply for a NARA approved event?

**National Archives Building, Washington, DC**

1280.74 What spaces in the National Archives Building are available for use by non-NARA groups and organizations?
1280.76 When are the public areas available for private events in the National Archives Building?
1280.78 Does NARA charge fees for the use of public areas in the National Archives Building?
1280.80 How do I request to use NARA public areas in the National Archives Building?
1280.82 How will NARA handle my request to use public areas in the National Archives Building?
1280.84 May I ask to use the Rotunda?
1280.85 What space in the National Archives at College Park is available for use by non-NARA groups and organizations?
1280.86 When are the public areas available for events in the National Archives at College Park?
1280.87 Does NARA charge fees for the use of public areas in the National Archives at College Park?
1280.88 How do I request to use NARA public areas in the National Archives at College Park?
1280.89 How will NARA handle my request to use public areas in the National Archives at College Park?

## Subpart D—What Rules Apply To Use NARA Public Areas in the Washington, DC Area?

### General

**§ 1280.70 When does NARA allow non-NARA groups to use the public areas of NARA property?**

(a) The primary use of NARA property in the Washington, DC, area (the National Archives Building and the National Archives at College Park), including those areas open to the public, is the conduct of official NARA business, including public programs and other activities conducted in conjunction with government and non-government organizations and the Foundation for the National Archives (''Foundation''). In conducting official business, NARA and its partners use all of the public areas of the Washington, DC, area facilities. There are no public areas in the Washington National Records Center in Suitland, MD.

(b) NARA may permit, under the conditions described in this subpart, the occasional use of certain public areas by other Federal agencies, quasi-Federal agencies, and state, local, and tribal government organizations for official activities. NARA also permits the occasional, non-official use of its public areas by organizations when the activity relates to or furthers NARA's archival, records, or other programs.

**§ 1280.71 What are the general rules for using NARA property in the Washington, DC area?**

In addition to the rules listed in Subparts A, B, and C of this part, you must adhere to the following rules when using NARA public spaces:

(a) All use must relate to or further the archival, records, or other activities of NARA. Examples of use that meet this standard include programs that promote research in or the dissemination and use of NARA holdings, including educational programs and materials, the preservation of NARA holdings or the historical records and documentary materials of other institutions, and the use and enjoyment of NARA exhibits.

(b) All use must be consistent with the public perception of NARA as an archival and research institution.

(c) When NARA cohosts an activity with the Foundation or other organizations, NARA must be identified as the cohost in all materials and publicity relating to the activity.

(d) When NARA has authorized your organization to use NARA property, you may not characterize your use of NARA property as an endorsement by NARA of your organization or its activities, or otherwise suggest an official relationship between NARA and your organization.

(e) You are not allowed to charge an admission fee or make any indirect assessment for admission, and you may not otherwise collect money at the event.

(f) You may not use NARA property or permission to use that property to advertise, promote, or sell commercial enterprises, products, or services, or for partisan political, sectarian, or similar purposes.

(g) You may not use NARA property if you or your organization or group engages in discriminatory practices proscribed by the Civil Rights Act of 1964, as amended.

(h) You must not misrepresent your identity to the public nor conduct any activities in a misleading or fraudulent manner.

(i) You must ensure that no Government property is destroyed, displaced, or damaged during your use of NARA public areas. You must take prompt action to replace, return, restore, repair or repay NARA for any damage caused to Government property during the use of NARA facilities.

**§ 1280.72 What additional rules apply for a NARA approved event?**

(a) Approved applicants must provide support people as needed to register guests, distribute approved literature, name tags, and other material.

(b) We must approve in advance any item that you plan to distribute or display during your use of NARA property, or any notice or advertisement that refers, directly or indirectly, to NARA, the Foundation for the National Archives, or the National Archives Trust Fund, or incorporates any of the seals described in 36 CFR 1200.2.

(c) We must approve in advance any vendor or caterer who will work in NARA facilities. You must comply with all NARA requirements for the use of food and drink at your event.

(d) No food or drink may be present or consumed in areas where original records or historical materials are displayed.

### National Archives Building, Washington, DC

**§ 1280.74 What spaces in the National Archives Building are available for use by non-NARA groups and organizations?**

You may ask to use the following areas in the National Archives Building, Washington, DC:

| Area | Capacity |
|---|---|
| Rotunda Galleries ..... | 250 persons. |
| William G. McGowan Theater. | 290 persons. |
| Archivist's Reception Room. | 125 persons. |
| Presidential Conference Rooms. | 20 to 70 persons. |

**§ 1280.76 When are the public areas available for private events in the National Archives Building?**

Most public areas are available for set-up and use on weekdays from 6 p.m.

until 10:30 p.m. during the fall and winter seasons (day after Labor Day through March 14). The areas are available for set-up and use from 7:30 p.m. until 10:30 p.m. in the spring season (March 15 through Labor Day). The areas are not available during weekends or on Federal holidays. A NARA staff member must be present at all times when non-NARA groups use NARA spaces.

**§ 1280.78 Does NARA charge fees for the use of public areas in the National Archives Building?**

(a) NARA is authorized to charge fees for the occasional, non-official use of its public areas, as well as for services related to such use, including additional cleaning, security, and other staff services. NARA will either exercise this authority directly, or, for activities co-sponsored with the Foundation for the National Archives, as part of your group's arrangements with the Foundation.

(b) We will inform organizations interested in using public spaces in the National Archives Building in advance and in writing of the total estimated cost associated with using the public area of interest. Fees NARA charges are paid to the National Archives Trust Fund.

(c) Federal and quasi-Federal agencies, State, local, and tribal governmental institutions using public space for official government functions pay fees to the National Archives Trust Fund only for the costs for additional cleaning, security, and other staff services NARA provides.

**§ 1280.80 How do I request to use NARA public areas in the National Archives Building?**

(a) Direct your request to use space to: Special Events Division Director (AI); National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Room G–9, Washington, DC 20408. Request by telephone at 202–357–5164 or by fax at 202–357–5926.

(b) You must submit requests, signed by an authorized official of your organization, to use NARA public areas at least 30 calendar days before the proposed event is to occur.

(c) OMB control number 3095—0043 has been assigned to the information collection contained in this section.

**§ 1280.82 How will NARA handle my request to use public areas in the National Archives Building?**

(a) When you ask to use property in the National Archives Building, we review your request to:

(1) Ensure that it meets all of the provisions in this subpart;

(2) Determine if the public area you have requested is available on the date and time you have requested;

(3) Evaluate whether your proposed use is appropriate for the requested space; and

(4) Determine the costs of the event.

(b) When we have completed this review, we will notify you of the decision. We may ask for additional information before deciding whether or not to approve your event.

(c) NARA reserves the right to review, reject, or require changes in any material, activity, or caterer you intend to use for the event.

**§ 1280.84 May I ask to use the Rotunda?**

The Rotunda is primarily used for the public exhibition of the Charters of Freedom and other documents from NARA's holdings. NARA also uses the Rotunda for activities that further its Strategic Plan. Therefore, the use of the Rotunda for private events is not permitted. NARA may, upon application, permit other Federal agencies, quasi-Federal agencies, and State, local, and tribal governments to use the Rotunda for official functions, with NARA as a co-sponsor. Governmental groups that use the Rotunda for official functions must reimburse NARA for the cost of additional cleaning, security, and other staff services.

## National Archives at College Park, MD

**§ 1280.85 What space in the National Archives at College Park is available for use by non-NARA groups and organizations?**

You may ask to use the following areas:

| Area | Capacity |
|---|---|
| Auditorium | 300. |
| Lecture Rooms | 30 to 70 persons (or up to 300 with all dividers removed). |

**§ 1280.86 When are the public areas available for events in the National Archives at College Park?**

Most areas are available for set-up and use from 8 a.m. until 9:30 p.m., Monday through Friday, and from 9 a.m. until 4:30 p.m. on Saturday. A NARA staff member must be present at all times when the public area is in use. If the space and staff are available, we may approve requests for events held before or after these hours and on Sunday.

**§ 1280.87 Does NARA charge fees for the use of public areas in the National Archives at College Park?**

NARA may charge a fee under 44 U.S.C. 2903(b) for the use of public areas at the National Archives at College Park. We inform organizations in advance and in writing of the total estimated cost of using the public area. Federal and quasi-Federal agencies, State, local, and tribal governmental institutions using public space for official government functions pay fees to the National Archives Trust Fund only for the costs for additional cleaning, security, and other staff services NARA provides.

**§ 1280.88 How do I request to use NARA public areas in the National Archives at College Park?**

(a) Direct your request to use space to: Special Events Coordinator (AII); Facilities and Personal Property Management Division; National Archives and Records Administration; 8601 Adelphi Road, College Park, MD 20740–6001. Request by telephone at 301–837–1900, or by fax at 301–837–3237.

(b) You must submit requests for use of NARA public areas at least 30 calendar days before the proposed event is to occur.

(c) OMB control number 3095—0043 has been assigned to the information collection contained in this section.

**§ 1280.89 How will NARA handle my request to use public areas in the National Archives at College Park?**

(a) When you ask to use public areas at the National Archives at College Park, we will review your request to:

(1) Ensure that it meets all of the provisions in this subpart;

(2) Determine if the room you have requested is available on the date and time you have requested; and

(3) Determine the cost of the event.

(b) When we have completed this review, we will notify you of the decision. We may ask for additional information before deciding whether or not to approve your event.

(c) NARA reserves the right to review, reject, or require changes in any material, activity, or caterer you intend to use for the event.

Dated: March 31, 2008.

**Allen Weinstein,**

*Archivist of the United States.*

[FR Doc. E8–7126 Filed 4–3–08; 8:45 am]

BILLING CODE 7515–01–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R04–OAR–2006–0130–200725; FRL–8551–5]**

## Approval and Promulgation of Implementation Plans Florida: Prevention of Significant Deterioration

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed approval and proposed conditional approval.

**SUMMARY:** EPA is proposing to conditionally approve State Implementation Plan (SIP) revisions submitted by the State of Florida on February 3, 2006. The proposed revisions modify Florida's Prevention of Significant Deterioration (PSD) permitting regulations in the SIP to address changes to the federal New Source Review (NSR) regulations, which were promulgated by EPA on December 31, 2002, and reconsidered with minor changes on November 7, 2003 (collectively, these two final actions are referred to as the ''2002 NSR Reform Rules''). The proposed revisions include provisions for baseline emissions calculations, an actual-to-projected-actual methodology for calculating emissions changes, options for plantwide applicability limits, and recordkeeping and reporting requirements. As part of the conditional approval, Florida will have twelve months from the date of EPA's final conditional approval of the SIP revisions in which to revise its PSD recordkeeping requirements and several definitions in order to be consistent with existing federal law.

In addition to and in conjunction with the proposed conditional approval of Florida's PSD permitting program SIP revisions, EPA is proposing to approve Florida's concurrent February 3, 2006, request to make the State's PSD permitting program applicable to electric power plants which are also subject to the Florida Electrical Power Plant Siting Act (PPSA). This proposed approval follows the receipt of adverse comments on, and EPA's subsequent withdrawal of, EPA's May 25, 2007, direct final rule granting full approval to Florida to implement its PSD permitting program for sources subject to the PPSA.

**DATES:** Comments must be received on or before May 5, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2006–0130, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail: adams.yolanda@epa.gov*.
3. *Fax:* 404–562–9019.
4. *Mail:* ''EPA–R04–OAR–2006–0130,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Yolanda Adams, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

*Instructions:* Direct your comments to Docket ID No. ''EPA–R04–OAR–2006–0130.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the Florida State Implementation Plan, contact Ms. Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9074. Ms. LeSane can also be reached via electronic mail at *lesane.heidi@epa.gov*. For information regarding New Source Review, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. The telephone number is (404) 562–9214. Ms. Adams can also be reached via electronic mail at *adams.yolanda@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

I. What actions are being proposed?
II. What is the background of EPA's proposed action on the Florida PSD rule revisions?
III. What is EPA's Analysis of Florida's PSD program revisions and what are the conditions for full SIP-approval?
IV. What is the background of prior EPA action on Florida's PSD program for electric power plants?
V. What is the basis for EPA's proposed SIP-approval of the inclusion of electric power plants in Florida's PSD program?
VI. Proposed Action
VII. Statutory and Executive Order Reviews

### I. What actions are being proposed?

*NSR Reform Revisions.* On February 3, 2006, the State of Florida, through the Florida Department of Environmental Protection (FDEP), submitted revisions to the Florida SIP. The submittal consists of revisions to the following

FDEP rules: Chapter 62–204, ''Air Pollution Control—General Provisions;'' Chapter 62–210, ''Stationary Sources—General Provisions;'' and Chapter 62–212, ''Stationary Sources—Preconstruction Review.'' The revisions were made to update the Florida PSD program to make it consistent with changes to the federal NSR regulations published on December 31, 2002 (67 FR 80186) and November 7, 2003 (68 FR 63021). EPA is proposing to conditionally approve the February 3, 2006, SIP submittal consistent with section 110(k)(4) of the Clean Air Act (''CAA'' or ''Act'').

Pursuant to section 110(k)(4) of the CAA, EPA may conditionally approve a portion of a SIP revision based on a commitment from the state to adopt specific, enforceable measures no later than twelve months from the date of final conditional approval. If the state fails to commit to undertake the necessary changes, or fails to actually make the changes within the twelve month period, EPA will issue a finding of disapproval. EPA is not required to propose the finding of disapproval. The necessary revisions to the Florida SIP will materially alter the existing SIP-approved rule. As a result, the State must also provide a new SIP submittal to EPA for approval that includes the rule changes within twelve months from the date of EPA's final action conditionally approving Florida's PSD program. As with any SIP revision, Florida must undergo public notice and comment, and allow for a public hearing (and any other procedures required by State law) on the proposed changes to its rules. If Florida fails to adopt and submit the specified measures by the end of one year (from the final conditional approval), or fails to make a SIP submittal to EPA within twelve months following the final conditional approval, EPA will issue a finding of disapproval. If Florida timely revises its rules and submits the revised SIP submittal, EPA will process that SIP revision consistent with the CAA.

Generally, with regard to the conditional approval of Florida's PSD program, Florida must revise its PSD recordkeeping requirements and several definitions in the rules. Section III below provides more details regarding EPA's analysis of Florida's PSD program and the changes that are necessary to the Florida rules in order for full approval of Florida's SIP revision.

*Applicability of Florida's SIP-approved PSD permitting program to electric power plants.* In addition to and in conjunction with the proposed conditional approval of Florida's PSD SIP revisions, EPA is proposing to approve Florida's concurrent February 3, 2006, request to make the State's PSD permitting program applicable to electric power plants subject to the Florida PPSA. Any final approval of this request would mean that Florida's SIP-approved PSD permitting program, including any final conditional approval of the State's PSD revisions noted above, would apply to electric power plants in Florida in lieu of the current federally delegated PSD program.

## II. What is the background of EPA's proposed action on the Florida PSD rule revisions?

On December 31, 2002 (67 FR 80186), EPA published final rule changes to 40 Code of Federal Regulations (CFR) parts 51 and 52, regarding the CAA's PSD and Nonattainment NSR (NNSR) programs. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. In that November 7, 2003, final action, EPA added the definition of ''replacement unit,'' and clarified an issue regarding plantwide applicability limitations (PALs). Collectively, these two EPA final actions are referred to as the ''2002 NSR Reform Rules.'' The purpose of this action is to propose to conditionally approve the SIP submittal from Florida, which addresses EPA's 2002 NSR Reform Rules.

The 2002 NSR Reform Rules are part of EPA's implementation of Parts C and D of title I of the CAA, 42 U.S.C. 7470–7515. Part C of title I of the CAA, 42 U.S.C. 7470–7492, is the PSD program, which applies in areas that meet the National Ambient Air Quality Standards (NAAQS)—''attainment'' areas—as well as in areas for which there is insufficient information to determine whether the area meets the NAAQS—''unclassifiable'' areas. Part D of title I of the CAA, 42 U.S.C. 7501–7515, is the NNSR program, which applies in areas that are not in attainment of the NAAQS—''nonattainment'' areas. Collectively, the PSD and NNSR programs are referred to as the ''New Source Review'' or NSR programs. EPA regulations implementing these programs are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, appendix S.

The CAA's NSR programs are preconstruction review and permitting programs applicable to new and modified stationary sources of air pollutants regulated under the CAA. The NSR programs of the CAA include a combination of air quality planning and air pollution control technology program requirements. Briefly, section 109 of the CAA, 42 U.S.C. 7409, requires EPA to promulgate primary NAAQS to protect public health and secondary NAAQS to protect public welfare. Once EPA sets those standards, states must develop, adopt, and submit to EPA for approval, a SIP that contains emissions limitations and other control measures to attain and maintain the NAAQS. Each SIP is required to contain a preconstruction review program for the construction and modification of any stationary source of air pollution to assure that the NAAQS are achieved and maintained; to protect areas of clean air; to protect air quality related values (such as visibility) in national parks and other areas; to assure that appropriate emissions controls are applied; to maximize opportunities for economic development consistent with the preservation of clean air resources; and to ensure that any decision to increase air pollution is made only after full public consideration of the consequences of the decision.

The 2002 NSR Reform Rules made changes to five areas of the NSR programs. In summary, the 2002 Rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with plant-wide applicability limits to avoid having a significant emissions increase that triggers the requirements of the major NSR program; (4) provide a new applicability provision for emissions units that are designated clean units; and (5) exclude pollution control projects (PCPs) from the definition of ''physical change or change in the method of operation.'' On November 7, 2003, EPA published a notice of final action on its reconsideration of the 2002 NSR Reform Rules (68 FR 63021), which added a definition for ''replacement unit'' and clarified an issue regarding PALs. For additional information on the 2002 NSR Reform Rules, see 67 FR 80186 (December 31, 2002), and *http://www.epa.gov/nsr*.

After the 2002 NSR Reform Rules were finalized and effective (March 3, 2003), industry, state, and environmental petitioners challenged numerous aspects of the 2002 NSR Reform Rules, along with portions of EPA's 1980 NSR Rules (45 FR 52676, August 7, 1980). On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit (DC Circuit Court) issued a decision on the challenges to the 2002 NSR Reform Rules. *New York* v. *United States*, 413 F.3d 3 (DC Cir. 2005). In summary, the DC Circuit Court vacated portions of the

rules pertaining to clean units and PCPs, remanded a portion of the rules regarding recordkeeping, 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and either upheld or did not comment on the other provisions included as part of the 2002 NSR Reform Rules. On June 13, 2007 (72 FR 32526), EPA took direct final action to revise the 2002 NSR Reform Rules to remove from federal law all provisions pertaining to clean units and the PCP exemption that were vacated by the DC Circuit Court. This proposed action on the Florida SIP is consistent with the decision of the DC Circuit Court because Florida's submittal does not include any portions of the 2002 NSR Reform Rules that were vacated as part of the June 2005 decision.

With regard to the remanded portions of the 2002 NSR Reform Rules related to recordkeeping, on December 21, 2007, EPA took final action on the proposed revisions by establishing that ''reasonable possibility'' applies where source emissions equal or exceed 50 percent of the CAA NSR significance levels for any pollutant (72 FR 72607). The ''reasonable possibility'' provision identifies for sources and reviewing authorities the circumstances under which a major stationary source undergoing a modification that does not trigger major NSR must keep records. Florida's regulations do not include the ''reasonable possibility'' language. Florida's SIP revisions require all modifications that use the actual-to-projected-actual methodology to meet the recordkeeping requirements. Thus, with regard to the reasonable possibility issue, Florida's rules are at least as stringent as the current federal rules (*see, e.g.*, F.A.C. section 62–212.300). However, another aspect of Florida's recordkeeping requirements is not consistent with the recordkeeping provisions set forth in the federal rules at 40 CFR 51.166(r)(6). As is explained in more detail below, Florida will have to revise its recordkeeping requirements as part of the proposed conditional approval.

The 2002 NSR Reform Rules require that state agencies adopt and submit revisions to their SIP permitting programs implementing the minimum program elements of the 2002 NSR Reform Rules no later than January 2, 2006. (Consistent with changes to 40 CFR 51.166(a)(6)(i), state agencies are now required to adopt and submit SIP revisions within 3 years after new amendments are published in the **Federal Register**.) State agencies may meet the requirements of 40 CFR part 51, and the 2002 NSR Reform Rules, with different but equivalent regulations.

On February 3, 2006, FDEP submitted a SIP revision for the purpose of revising the State's PSD permitting provisions. These changes were made primarily to adopt EPA's 2002 NSR Reform Rules. These revisions became State-effective on February 2, 2006, and February 12, 2006. Even though Florida currently has nonattainment rules approved in the SIP, this submittal did not include revisions to the NNSR rules because there are currently no nonattainment areas in Florida. Copies of Florida's revised PSD rules, as well as the State's Technical Support Document (TSD), can be obtained from the Docket, as discussed in the **ADDRESSES** section above.

As is discussed in further detail below, EPA believes the revisions contained in the Florida submittal are approvable for inclusion into the Florida SIP so long as the specific changes described below are made within twelve months of the date of EPA's final conditional approval. As a result, EPA is proposing to conditionally approve the Florida SIP revisions, consistent with section 110(k)(4) of the CAA.

## III. What is EPA's Analysis of Florida's PSD program revisions and what are the conditions for full SIP-approval?

This section summarizes EPA's analysis of the changes being proposed for inclusion into the Florida SIP.

F.A.C. Chapter 62–204, entitled ''Air Pollution Control—General Provisions'' contains general air pollution control requirements that apply regardless of the type or size of the emissions source. F.A.C. section 62–204.260 sets forth PSD increments for pollutants for which EPA has established such increments. Definitions at section 62–204.200 describe those emissions which affect (i.e. expand or consume) PSD increment. Under previous FDEP rules, some provisions related to increment consumption and expansion were located at section 62–212.400. The current rule revisions consolidate all such provisions in the definitions at section 62–204.200 for greater clarity. In addition, rule language has been amended to more closely reflect the federal rules.

F.A.C. Chapter 62–210, entitled ''Stationary Sources—General Requirements,'' contains definitions of terms used in Chapter 62–212, as well as other stationary source rules. Chapter 62–210 also establishes general permitting, public notice, reporting, and permit application requirements. Chapter 62–212, entitled ''Stationary Sources—Preconstruction Review'' contains specific preconstruction permitting requirements for various types of air construction permits, including minor source permits, PSD permits, NNSR permits, and the more recently added PAL permits. Revisions were made to these rules to incorporate changes resulting from the 2002 NSR Reform Rules, with the exception that F.A.C. section 62–212.500, entitled, ''Preconstruction Review for Nonattainment Areas'' was not revised since there are no longer any nonattainment areas in Florida. This rule will need to be amended if nonattainment areas are designated in Florida in the future.

F.A.C. section 62–212.400 contains the State's PSD preconstruction review program as required under Part C of title I of the CAA. The PSD program applies to major stationary sources or modifications constructing in areas that are designated as attainment or unclassifiable with respect to the NAAQS. Florida's PSD program was originally approved into the SIP by EPA on December 22, 1983, and has been revised several times. The current changes to F.A.C. Chapters 62–204, 62–210 and 62–212, which EPA is now proposing to conditionally approve into the Florida SIP, were submitted to update the existing Florida regulations to be consistent with the current federal PSD rules, including the 2002 NSR Reform Rules. The SIP revision addresses baseline actual emissions, actual-to-projected-actual applicability tests, and PALs.

EPA's evaluation of the Florida SIP submittal included a line-by-line comparison of the proposed revisions with the federal requirements. As a general matter, state agencies may meet the requirements of 40 CFR part 51, and the 2002 NSR Reform Rules, with different but equivalent regulations. While some states choose to incorporate by reference the applicable federal rules, other states (such as Florida) choose to draft rules that track the federal language but contain differences. As part of its February 3, 2006, SIP submittal, Florida provided EPA with an Equivalency Determination and Response to Comments (ED and RTC) that address differences from the federal rules noted by EPA in its comments on Florida's prehearing submittal. As a point of clarification, although FAC section 62–204.800, ''Federal Regulations Adopted by Reference,'' includes 40 CFR part 52, this Florida rule does not legally ''incorporate by reference'' the entirety of part 52. According to Florida's ED and RTC, the reference to part 52 does not make those

regulations applicable, but rather, other rules, such as the PSD rule currently at issue, define how the elements of part 52 will apply in Florida.

Although EPA has determined that some of the differences in Florida's PSD program are acceptable, some differences are not consistent with the federal rules. Therefore, EPA has determined that Florida's PSD program does not meet all the program requirements for the preparation, adoption and submittal of implementation plans for the Prevention of Significant Deterioration of Air Quality, set forth at 40 CFR 51.166 and revisions are necessary for full approval.

The required changes relate to the definitions of ''new emissions unit,'' ''PSD pollutant,'' ''significant emissions rate,'' and the recordkeeping requirements found at 51.166(r)(6). Consistent with section 110(k)(4) of the CAA, EPA may conditionally approve Florida's SIP revision based on the State's commitment to adopt specific, enforceable measures by a date certain, not to exceed one year after the date of the final conditional approval.

A discussion of the specific changes to Florida's rules comprising the SIP revision, as well as the additional changes that must be made by Florida as part of the conditional approval, follows. The discussion addresses both acceptable deviations from the federal rules, as well as the differences that are subject to the conditional approval.

*1. New Emissions Unit*

Florida's definition for ''new emissions unit'' for PSD purposes is found in F.A.C. section 62–210.200(184).[1] This definition is not consistent with the federal definition found at 40 CFR 51.166(b)(7)(i). Pursuant to federal law, a ''new emissions unit'' is ''any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.'' 40 CFR 51.166(b)(7)(i). Under Florida law, however, a ''new emissions unit'' is ''any emissions unit that is or will be newly constructed and that has enlisted for less than 2 years from the date of *beginning normal operation.*'' See, F.A.C. section 62–210.200(184) (emphasis added). Florida's ED and RTC indicate that the use of the term ''beginning normal operation'' takes into account that most new units undergo a ''shakedown'' period during which the unit is operating but may not have normal, representative emissions. FDEP therefore believes that this term clarifies the intent of the federal requirement. EPA disagrees that this language is equivalent to the federal rule. Florida must revise its regulations to better define what is meant by ''beginning normal operation,'' to ensure that the ''shakedown'' period does not continue for an unbounded period of time. EPA recommends that Florida adopt the language of the federal rule. However, if Florida chooses otherwise, FDEP will need to provide EPA with an equivalency demonstration supporting the new, more specific, regulation. In addition, EPA also identified a typographical error in this provision that should be addressed. The language ''* * * that has *enlisted* for less than * * *'' should read ''* * * that has *existed* for less than * * *.'' F.A.C. section 62–210.200(184) (emphasis added).

*2. Pollution Control Project (PCP)*

As mentioned previously, the PCP exemption provisions of the federal rules, including the definition of ''pollution control project,'' were vacated by the DC Circuit Court. Florida's regulations still include a definition for ''pollution control project'' (found at F.A.C. section 62–210.200(209)). In its ED and RTC, Florida explains that this term is no longer used anywhere within the Florida regulations and the intent is to exclude clean coal technology demonstration projects from triggering a major modification. However, such projects are excluded at 51.166(b)(2)(iii)(j), and F.A.C. section 62–210.200(161)(c)9. Even though Florida's definition of ''pollution control project'' is not the same as the vacated federal definition, EPA believes that the use of the term ''PCP'' in the Florida regulations may be confusing to both the public and the regulated community, and could be misconstrued as the vacated portion of the federal rules. Because the clean coal technology demonstration project exemption is already independently defined and included in F.A.C. section 62–210.200(190)(c)9, EPA recommends that the term ''pollution control project'' be removed from the rules to be included in the Florida SIP.

*3. Regulated NSR Pollutant*

Florida's definition of ''PSD Pollutant'' found at F.A.C. section 62–210.200(219) is intended to be equivalent to the federal definition of ''Regulated NSR pollutant'' at 51.166(b)(49). Florida defines ''PSD Pollutant'' as ''any pollutant listed as having a significant emissions rate as defined in F.A.C. section 62–210.200.'' The definition of ''significant emissions rate,'' found at F.A.C. section 62–210.200(243), includes ''a rate listed at 40 CFR 52.21(b)(23)(i) * * * specifically the following rates,'' and proceeds to list rates for carbon monoxide, nitrogen oxides, sulfur dioxide, particulate matter, ozone, lead, fluorides, sulfuric acid mist, hydrogen sulfide, total reduced sulfur, reduced sulfur compounds, municipal waste combustor organics, metals, and acid gases, municipal solid waste landfills emissions, and mercury. The federal definition of ''Regulated NSR Pollutant'' includes: (1) Any pollutant for which a NAAQS has been promulgated and any constituents or precursors for such pollutants identified by the Administrator; (2) any pollutant that is subject to any standard promulgated under section 111 of the Act; (3) any Class I or II substance subject to a standard promulgated under or established by title VI of the Act; and (4) any pollutant that otherwise is subject to regulation under the Act.

In its ED and RTC, Florida explains that its definition of significant emissions rate includes all pollutants for which a NAAQS has been promulgated thus far, all precursors for such pollutants which have thus far been identified by the Administrator, all pollutants subject to standards promulgated under section 111 of the Act, and all pollutants thus far regulated under the Act. Florida acknowledges that its rules do not include ozone depleting substances (i.e., Class I and Class II substances subject to a standard under title VI of the CAA) in the definition of PSD pollutant. Because ozone depleting substances are regulated NSR pollutants pursuant to federal law, Florida must also regulate such pollutants in order for its PSD program to meet the requirements of the federal program. Therefore, as part of the conditional approval, Florida must revise its rules to include Class I and Class II substances in its list of PSD pollutants.

*4. Significant Emissions Rate*

The definition of ''significant emissions rate,'' found at F.A.C. section 62–210.200(243), includes ''a rate listed at 40 CFR 52.21(b)(23)(i) * * * specifically the following rates,'' and proceeds to list rates for specific pollutants. Federal regulations define ''significant'' as a rate of emissions that

[1] The references to the Florida regulations in this notice correspond to the numbering in the SIP submittal. Since Chapter 62–210 contains definitions for other stationary source rules and these definitions are maintained in alphabetical order, the references given in this notice do not correspond to the current Florida regulations due to subsequent amendments to Florida stationary rules. This is the case for all definitions being discussed in this notice.

would equal or exceed a pollutant specific list of emissions rates. See, 40 CFR Part 51.166(b)(23)(i). In addition, federal law defines significant as ''any emissions rate'' of a regulated NSR pollutant that is not listed in § 51.166(b)(23)(i), and ''any emissions rate'' at a major stationary source constructing within 10 kilometers of a Class I area, which would have an impact on such area equal to or greater than 1 microgram per cubic meter (μg/m$^3$) over a 24-hour average. Florida's PSD rules do not include ''any emissions rate'' for a pollutant that is not listed in the significant emissions rate list, but that could otherwise be considered a regulated NSR pollutant (i.e. ''any pollutant that is otherwise subject to regulation under the Act''). In addition, Florida's PSD rules limit the Class I area impact provision to only those pollutants that are listed in the significant emissions rates list. See, F.A.C. section 62–210.200(243)(b). In its ED and RTC, Florida explains that its PSD rules include all pollutants that are currently regulated under the federal rules, and which fall within FDEP's existing statutory authority. For those pollutants which may become regulated NSR pollutants in the future, FDEP commits to adopting those pollutants into the State's PSD rules as soon as possible after EPA's promulgation. EPA agrees that Florida's PSD rules include significant emissions rates for all currently regulated NSR pollutants, except ozone depleting substances (discussed above), and that Florida's approach to adopting any other pollutants as part of its definition of PSD pollutant in an expeditious manner after promulgation by EPA, is an acceptable approach to ensuring that Florida's PSD program is consistent with the federal PSD program.

*5. Mercury*

As a general matter, hazardous air pollutants (HAPs) are not regulated NSR pollutants unless they are also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the Act. Pursuant to Section 112(b)(6) of the CAA, the PSD provisions of the CAA ''shall not apply to pollutants listed in'' Section 112. Mercury is specifically listed as a HAP in Section 112(b)(1). As a result, the CAA's PSD program does not apply to mercury. Section 110 of the CAA, governing SIP review and approval, describes what types of regulations should be included in the SIP; specifically, regulations supporting attainment and maintenance of the NAAQS. Mercury is not identified as a criteria pollutant for which a NAAQS is established, nor is it identified as a constituent of such a pollutant or a precursor of such a pollutant. As a result, regulations governing mercury should not be included in SIPs. As previously mentioned, Florida's definition of ''significant emissions rate,'' found at F.A.C. section 62–210.200(243), includes ''a rate listed at 40 CFR 52.21(b)(23)(i) * * * specifically the following rates,'' and it proceeds to list rates for among other pollutants, mercury.

In its ED and RTC, Florida explains that its PSD program has included a significant emission rate for mercury since the 1980s. However, following the enactment of the 1990 amendments to the CAA, EPA advised states to remove HAPs from PSD rules included in the SIP. Florida did remove some HAPs, but retained mercury. Because the 1990 CAA Amendments (and the addition of Section 112(b)(6)) has altered EPA's approach with regard to mercury, EPA is now seeking to remedy the inclusion of mercury in the Florida SIP as a PSD pollutant. Notably, Florida may retain mercury as a regulated pollutant pursuant to State authority and State law. However, mercury cannot be included as a regulated pollutant in the SIP. As part of the conditional approval, Florida must withdraw its request that EPA include a significant emissions rate for mercury in the Florida SIP, specifically section 200.243(a)2 of F.A.C. Chapter 62–210.

*6. Recordkeeping Requirements*

Federal rules at 40 CFR 51.166(r)(6)(i)(c) require that the owner or operator document and maintain a record of the description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under the definition of ''projected actual emissions'' (i.e. that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth) and an explanation as to why this amount was excluded, and any netting calculations if applicable. F.A.C. section 62–212.300(3)(a) requires each applicant to provide at a minimum, the nature and amounts of emissions from the emissions unit, including baseline actual emissions and projected actual emissions when used to determine PSD applicability, and when used to establish a PAL. However, Florida rules do not specifically require a record of the amount of emissions excluded pursuant to the projected actual emissions requirements, an explanation as to why these emissions were excluded, and any netting calculations if applicable. As part of the conditional approval, Florida must revise its rules to make the recordkeeping requirements consistent with the federal recordkeeping requirements at 40 CFR 51.166(r)(6).

*7. Replacement Unit*

As previously mentioned, on November 7, 2003 (68 FR 63021), EPA added a definition of ''replacement unit'' to federal NSR rules. See, 40 CFR 51.166(32). EPA also revised the definition of ''emissions unit'' to clarify that a replacement unit is considered an existing emissions unit and therefore is eligible for the actual-to-projected-actual test for major NSR applicability determinations. Florida rules do not include a definition of replacement unit, and do not specify in the definition of existing emissions unit that a replacement unit is considered an existing emissions unit. As stated in the preamble to the November 7, 2003 (68 FR 63021) rule amendments, the December 2002 rules, ''* * * as supplemented by the discussion in the December 2002 preamble, are self-implementing for replacement units.'' Florida intends to implement these provisions consistent with federal regulations. In other words, in Florida a replacement unit is considered an existing emissions unit and therefore is eligible for the actual-to-projected-actual test for major NSR applicability test determinations. Therefore, based on Florida's intent to implement these provisions consistent with federal regulations, EPA does not believe that this difference from the federal regulations makes Florida's PSD program less stringent than the federal program.

*8. Malfunction Emissions*

Federal regulations require the inclusion of emissions associated with malfunctions in the calculation of ''projected actual emissions'' and ''baseline actual emissions.'' Florida's definitions of ''projected actual emissions'' and ''baseline actual emissions'' at F.A.C. sections 62–210.200(34) and (215) respectively, do not require the inclusion of emissions associated with malfunctions. Florida will be relying only on quantifiable emissions that can be verified. Given that Florida will be consistently applying this approach for both ''projected actual emissions'' and

''baseline actual emissions'' and that this approach will not prevent malfunctions from being exceedances of applicable standards, EPA has determined that this difference does not make Florida's PSD program less stringent than the federal program. These changes do not affect source obligations regarding excess emissions related notifications that may be required by State or federal law.

*9. Major Stationary Source*

One of the changes proposed in the Florida submittal is to replace the State definition of ''major stationary source'' with the federal definition contained at 40 CFR 52.21(b). For the most part, the effect of this change is simply to reword the State definition so that it reads the same as the federal definition. EPA notes, however, that in replacing the Florida definition with the federal definition, the State has adopted the phrase ''except the activities of any vessel.'' This phrase was remanded and vacated by the DC Circuit Court, and Florida had explicitly excluded this language from the State rule when it initially adopted the State PSD regulations. *See, Natural Resources Defense Council v. EPA*, 725 F.2d 761 (DC Cir. 1984). This change may have the effect of excluding activities that were previously covered by the state rule. Hence, EPA requests clarification as to whether it is the state's intention to amend the SIP to include this language, or whether it was an unintended consequence of adopting the federal definition verbatim.

In summary, EPA is proposing to conditionally approve, into Florida's SIP, revisions to Florida's PSD permitting program. As part of the conditional approval mechanism, within twelve months of EPA's final action on the conditional approval, the State must: (1) Revise the definition of ''new emissions unit'' to be consistent with the federal definition or revise the definition to define what is meant by ''beginning normal operation'' and provide an equivalency demonstration supporting the revised definition; (2) revise the definition of ''significant emissions rate'' to include ozone depleting substances; (3) withdraw the request that EPA include a significant emissions rate for mercury in the Florida SIP, specifically section 200.243(a)2 of F.A.C. Chapter 62–210; and (4) revise the recordkeeping requirements at F.A.C. section 62–212.300 to be consistent with federal requirements. If Florida fails to comply with these four requirements in the specified period of time, EPA will issue a finding of disapproval.

## IV. What is the background of prior EPA action on Florida's PSD program for electric power plants?

For reasons described further below, electric power plants subject to the Florida PPSA have historically been permitted by FDEP (through a federal delegation of authority from EPA) under the federal PSD program rather than the Florida SIP-approved PSD permitting program. With the reasons for the necessity of such delegation of federal authority removed, Florida requests that electric power plants within the State now be permitted under the State's SIP-approved PSD permitting program. Because EPA agrees with Florida that the necessity for such federal delegation no longer exists, EPA is proposing to approve Florida's request to make the State's PSD permitting program (rather than the federal PSD permitting program) applicable to electric power plants in the State.

As noted earlier, Part C of the CAA establishes the PSD permitting program—a preconstruction review program that applies to areas of the country that have attained the NAAQS. CAA 160–169, 42 U.S.C. 7470–7479. In such areas, a major stationary source may not begin construction or undertake certain modifications without first obtaining a PSD permit. In broad overview, the program (1) limits the impact of new or modified major stationary sources on ambient air quality and (2) requires the application of state-of-the-art pollution control technology, known as best available control technology. CAA 165, 42 U.S.C. 7475.

EPA has promulgated two largely identical sets of regulations to implement the PSD program. One set, at 40 CFR 52.21, contains EPA's own federal PSD program under which EPA is the permitting authority in states operating without an EPA-approved state program. The other set of regulations contains minimum requirements that state PSD programs must meet to be approved by EPA as part of a SIP. 40 CFR 51.166. Over time, most states have received EPA approval for their PSD programs.

In order to comply with the established minimum requirements of the CAA, Florida adopted its own PSD regulations on June 10 and October 28, 1981. The Florida PSD program was proposed for approval on December 14, 1982 (47 FR 55964) and initially approved by EPA into the Florida SIP on December 22, 1983 (48 FR 52713). The approval transferred to FDEP the legal authority to process and issue PSD permits to sources in Florida that are required to obtain PSD permits.

One category of sources not covered by EPA's 1983 approval of Florida's PSD program was electric power plants. This was because, at the time, a separate Florida law known as the Florida Electrical Power Plant Siting Act (PPSA), Florida Statutes Section 403.501 *et seq.*, required permits for electric power plants to be issued solely by the Power Plant Site Certification Board under the PPSA, rather than by FDEP under Florida's PSD regulations. Such a conflict between the PPSA and Florida's PSD program created impediments to implementation and enforcement of the State's PSD program by FDEP for such power plants and precluded EPA's SIP-approval of Florida's PSD program as to these sources. As a result, on November 5, 1985, EPA delegated partial authority to FDEP to conduct the technical and administrative portion of the federal PSD program for power plants subject to the Florida PPSA (with EPA retaining final permitting authority). Letter from Jack E. Ravan, EPA Region 4, to Victoria J. Tschinkel, Florida Department of Environmental Regulation (November 5, 1985).

On July 1, 1986, the Florida Legislature amended the PPSA in an effort to extricate the implementation of PSD regulations from the State's non-SIP power plant siting regulations and thereby allow FDEP to issue PSD permits to those sources subject to the PPSA. On its face, the 1986 Florida legislative amendment appeared to provide FDEP with authority to fully implement (i.e., issue and enforce) federal PSD regulations for sources subject to the PPSA. Thus, on September 25, 1986, EPA restored full delegation of federal authority to Florida for these sources. Public notice of this restoration of full federal delegation was published on October 27, 1986 (51 FR 37972).

Although full federal delegation was restored to FDEP in October 1986, Florida did not subsequently submit to EPA a SIP revision requesting approval to apply its SIP-approved State PSD program to electrical power plants subject to the PPSA (in lieu of the fully delegated federal PSD program). Thus, FDEP continued to issue permits to sources subject to the PPSA under its federally-delegated authority until 1992. However, in February 1992, EPA became aware of an issued Florida court opinion wherein the state court expressly declared that Florida's 1986 legislative amendments to the PPSA did not confer on FDEP the authority to issue federally-enforceable PSD permits

containing conditions which differed from those imposed by the PPSA Siting Board during the source's site certification. Letter from Greer C. Tidwell, EPA Region 4, to Carol M. Browner, Florida Department of Environmental Regulation (February 5, 1992); *TECO Power Services Corp. v. Florida Department of Environmental Regulation*, First District Court of Appeal, Case No, 91–300 (December 20, 1991). In response to EPA's inquiries concerning this state court opinion, FDEP responded that ''the practical effect of the decision is to render ineffective the 1986 amendments and return the law to the same essential configuration as it appeared in 1985. Therefore, in the absence of further amendment to the PPSA, it would appear necessary for EPA to resume final permitting authority over PSD for new PPSA sources.'' Letter from Carol M. Browner, Florida Department of Environmental Regulation, to Greer C. Tidwell, EPA Region 4 (April 27, 1992). EPA agreed with FDEP, and consequently, on August 7, 1992, we revoked Florida's full federal delegation of PSD authority for PPSA sources. FDEP, however, retained partial federal delegation to conduct the technical and administrative portion of the federal PSD program for power plants subject to the Florida PPSA (with EPA again retaining final permitting authority). Letter from Greer C. Tidwell, EPA Region 4, to Carol M. Browner, Florida Department of Environmental Regulation (August 7, 1992).

In 1993, the Florida Legislature again amended the PPSA to address concerns over the inappropriate influence of the Florida Power Plant Siting Board's certification decisions on the PSD permitting process. The amendments, which took effect on April 22, 1993, expressly provided that the ''Department's action on a federally required new source review or prevention of significant deterioration permit shall differ from the actions taken by the siting board regarding the certification if the federally approved state implementation plan requires such a different action to be taken by the department. Nothing in this part the PPSA shall be construed to displace the federally approved permit program.'' In light of this 1993 amendment to the PPSA, FDEP requested that EPA grant it full federal delegation of PSD permitting authority for sources subject to both the federal PSD regulations and the PPSA. Letter from Virginia B. Wetherell, Florida Department of Environmental Protection, to Patrick Tobin, EPA Region 4 (September 27, 1993) . Because the 1993 PPSA amendment made clear that FDEP is the final permitting authority for PSD and new source review permits and can act in a manner different from the PPSA Siting Board if Florida's PSD or new source review regulations require such a different action, EPA once again granted full federal delegation to FDEP on October 26, 1993. Letter from Patrick Tobin, EPA Region 4, to Virginia Wetherell, Florida Department of Environmental Protection. (October 26, 1993).

The statutory amendment to the PPSA made by the Florida Legislature in 1993 forms the basis of the State's 2006 request for EPA approval to make Florida's SIP-approved State PSD program, rather than the federal PSD program, applicable to sources subject to the PPSA. In addition, during EPA's review of this request, the PPSA was again amended (on June 19, 2006), to among other things, further extricate Florida's PSD permitting process from its PPSA process. See, Florida Public Health Code 403.0872. Specifically, language requiring that a PPSA application for certification include ''documents necessary for the department to render a decision on any permit required pursuant to any federally delegated or approved permit program'' was deleted from the PPSA; language requiring that FDEP's action on a PSD permit be based on the recommended order of the PPSA certification hearing was removed; and requirements that administrative procedures used in the issuance of PSD and operating permits follow the administrative procedures of the PPSA were also removed.

Following our review of both the 1993 and June 19, 2006, amendments to the PPSA, the Agency published a direct final rule on May 25, 2007, finding that the PPSA amendments provided FDEP the authority to fully implement and enforce Florida's PSD program for electric power plants located within the State and we granted it full approval to implement the State's PSD program for electric power plants subject to the PPSA. 72 FR 29287 (May 25, 2007). However, because adverse comments on the direct final rule were received, we withdrew the rule on June 28, 2007 (72 FR 35355) and indicated that the rule would not take effect.

## V. What is the basis for EPA's proposed SIP-approval of the inclusion of electric power plants in Florida's PSD program?

EPA continues to believe, for the reasons detailed above, that the 1993 and June 2006 Florida legislative amendments to the State's PPSA rectified past concerns that the Florida PPSA infringed on FDEP's authority to issue State PSD permits to sources subject to both the State's PSD regulations and the Florida PPSA in such a manner that SIP-approval of the State's PSD program for those sources was precluded. We also believe that by proposing this SIP-approval through this rulemaking (rather than by direct final rulemaking) and in conjunction with our proposed action on the Florida PSD program SIP revisions, we have addressed the main concerns raised by commenters in response to our May 25, 2007, direct final rule. For example, a number of environmental organizations, in jointly submitted comments, expressed concern that a direct final rulemaking was not the proper process for this particular SIP action because of public interest in providing comments, that any SIP-approval to make the State's PSD program, rather than the federal PSD program, applicable to electric power plants in Florida required a full review of the State's PSD regulations to ensure compliance with federal law, and that any such SIP-approval should be done in conjunction with a review of the State's PSD regulatory revisions made for purposes of addressing EPA's 2002 NSR Reform Rules.

While EPA disagrees that our previous direct final rulemaking for this matter was not procedurally appropriate and that a wholesale revisiting of all Florida PSD regulations is required in order to make the State's PSD program applicable to sources covered by the PPSA, we believe that there is value-added to the public's review of this matter by including it with our proposed action on the State's current PSD revisions. In addition, we have, in response to other comments made on our May 2007 direct final rule, added more detail and Docket material in this proposed rulemaking action in support of the various delegations of federal authority made to FDEP since 1985 in response to the PPSA problem. Finally, with regard to several remaining comments on the May 2007 direct final rule, EPA notes that SIP approval actions, whether done through a direct final rulemaking process or a proposed/final rulemaking process are not Section 307(d) rulemakings under the CAA and do not require the inclusion of elements listed in Section 307(d)(3). Rather, EPA chooses to use the Administrative Procedure Act's notice and comment rulemaking process to ensure public notice of EPA action. In any event, we believe that today's proposed rulemaking includes all information

necessary for informed public comment on the proposed approval.

## VI. Proposed Action

EPA is proposing to conditionally approve revisions to the Florida SIP (F.A.C. Chapters 62–204, 62–210 and 62–212) submitted by FDEP on February 3, 2006. As part of the conditional approval, Florida must (1) revise the definition of ''new emissions unit'' to be consistent with the federal definition or revise the definition to define what is meant by ''beginning normal operation'' and provide an equivalency demonstration supporting the revised definition; (2) revise the definition of ''significant emissions rate'' to include ozone depleting substances; (3) withdraw the request that EPA include a significant emissions rate for mercury in the Florida SIP, specifically section 200.243(a) 2 of F.A.C. Chapter 62–210; and (4) revise the recordkeeping requirements at 62–212.300 to be consistent with federal requirements.

In addition to and in conjunction with the proposed conditional approval of Florida's PSD SIP revisions, EPA is proposing to approve Florida's concurrent February 3, 2006, request to make the State's PSD permitting program applicable to electric power plants subject to the Florida PPSA. Any final approval of this request would mean that Florida's SIP-approved PSD permitting program, including any final conditional approval of the State's PSD revisions noted above, would apply to electric power plants in Florida in lieu of the current federally delegated PSD program.

## VII. Statutory and Executive Order Reviews

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

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000). These proposed actions also do not have Federalism implications because they do not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). These proposed actions merely propose to approve State rules implementing a Federal standard, and do not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves State rules implementing a Federal standard.

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

## List of Subjects in 40 CFR Part 52

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

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

Dated: March 27, 2008.

**J.I. Palmer, Jr.,**

*Regional Administrator, Region 4.*

[FR Doc. E8–7073 Filed 4–3–08; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Parts 300 and 635

**[Docket No. 080221247–8166–01]**

**RIN 0648–AU88**

## International Fisheries; Atlantic Highly Migratory Species

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

**ACTION:** Proposed rule; request for comments; notice of public hearings.

**SUMMARY:** NMFS proposes to modify permitting and reporting requirements for the Highly Migratory Species (HMS) International Trade Permit (ITP) to improve program efficacy and enforceability, and implement the International Commission for the Conservation of Atlantic Tunas (ICCAT) bluefin tuna catch documentation (BCD) program. The modified regulations would also require that shark fin importers, exporters, and re-exporters obtain the HMS ITP to assist NMFS in monitoring trade of shark fins, and would implement the new definition of ''import'' contained in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Written comments on the proposed rule and supporting documents must be received on or before May 5, 2008. Comments sent to the Office of Management and Budget (OMB) on the information collection requirements of the proposed rule must also be received on or before May 5, 2008.

The public hearings will be held in April (see the **SUPPLEMENTARY INFORMATION** section for further details).

**ADDRESSES:** You may submit comments, identified by ''A0648–AU88'', by any one of the following methods:

• Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov*

• Fax: 978–281–9340, Attn: Dianne Stephan

• Mail: Dianne Stephan, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, One Blackburn Dr., Gloucester, MA 01930

Copies of the supporting documents including the Initial Regulatory Flexibility Analysis and Regulatory Impact Review are available by sending your request to Dianne Stephan at the mailing address specified above. This document is also available via the internet at: *http://www.nmfs.noaa.gov/sfa/hms/breaking_news.htm*.

Instructions: All comments received are a part of the public record and will generally be posted to Portal *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address, or may be submitted to the Office of Regulatory Affairs, Office of Management and Budget, by email to *David_Rostker@omb.eop.gov* or by fax to (202) 395–7285.

See the **SUPPLEMENTARY INFORMATION** section for hearing locations.

**FOR FURTHER INFORMATION CONTACT:** Dianne Stephan, 978–281–9260.

**SUPPLEMENTARY INFORMATION:**

## Background

The United States, which includes the Commonwealth of Puerto Rico, American Samoa, the U.S. Virgin Islands, Guam, and all other U.S. commonwealths, territories, or possessions, is a member of the International Commission for the Conservation of Atlantic Tunas (ICCAT) and the Inter-American Tropical Tuna Commission (IATTC). The United States has implemented statistical document programs under the HMS ITP program regulations per recommendations of regional fishery management organizations (RFMOs), and U.S. authorizing legislation as outlined below. This rule replaces the ICCAT bluefin tuna statistical document program with the initial implementation of the ICCAT BCD program recommended at the 2007 ICCAT annual meeting. Other objectives of the rule are to adjust the HMS ITP regulatory program, as informed by NMFS and industry experiences since the program was implemented, and to adopt the new definition of import contained in the Magnuson-Stevens Act. Lastly, the rule proposes to require permitting of shark fin traders under the HMS international trade regulations to help NMFS monitor trade of shark fins.

### Consignment Document Programs

Several RFMOs have implemented consignment tracking such as statistical document trade tracking programs to combat illegal, unregulated, and unreported (IUU) fishing of internationally managed species, as well as to further understand trade and markets effects on commerce of these species. Statistical documents are required when a product is exported and include information on the shipped product such as product type, species, amount, and flag nation of the harvesting vessel. The documents must accompany the product until the product is sold to a consumer, and participating nations must collect the final statistical documents and submit summarized data to the relevant RFMO for use in fishery management.

A statistical document program for Atlantic bluefin tuna was implemented in the United States (60 FR 14381; March 17, 1995) pursuant to ICCAT Recommendation 92–01 and set a precedent for tracking trade from all ocean areas for recommendations pertaining to a single geographic region. The 1992 ICCAT recommendation for tracking Atlantic bluefin tuna commerce only included statistical document requirements for imports and exports of frozen product. In 1993, the program was expanded to cover fresh products (ICCAT Recommendation 93–03), and in 1997, ICCAT recommended the addition of a re-export certificate to the program (97–04). The Commission for the Conservation of Southern Bluefin Tuna (CCSBT) implemented a statistical document program for SBT and requested non-members such as the United States to support this program. The United States implemented this program in 2005 (69 FR 67268, November 17, 2004).

Based on the experience gained with the Bluefin tuna statistical document program, ICCAT recommended statistical document programs for frozen bigeye tuna and swordfish in 2000 (00–22) and established these programs in 2001 (ICCAT Recommendations 01–21 and 22, respectively). The swordfish statistical document program replaced the previously required swordfish certificate of eligibility, which had been established to enforce a minimum size on imported product and monitor trade of Atlantic swordfish (64 FR 12903, March 16, 1999). The Indian Ocean Tuna Commission (Recommendation 01/06) and IATTC (Recommendation C–03–01) both adopted a statistical document program for frozen bigeye tuna similar to the ICCAT program. The United States implemented these statistical document programs for swordfish and frozen bigeye tuna in 2005 (69 FR 67268, November 17, 2004).

ICCAT adopted Recommendation 07–10 at its 2007 annual meeting. The recommendation implements the BCD program. The BCD program expands the ICCAT bluefin tuna statistical document program to further track bluefin tuna consignments, beginning at the point of catch and including transit through Mediterranean farming operations, unlike the previous statistical document program, which only tracked consignments through trade to the final importer. As implemented in the previous statistical document program, the BCD program would continue to track bluefin tuna consignments through trade to the final importer. The intent of this program expansion is to further reduce IUU fishing, obtain better catch and farming data, and more effectively implement the Atlantic bluefin tuna recovery program.

The United States implemented several statistical document programs in 2005 (69 FR 67268, November 17, 2004). The same rulemaking served to consolidate the new and previously existing statistical document programs into one place in the regulations (50 CFR part 300 subpart M), and unify parts of their administrative implementation. Under the 2005 rulemaking, individuals who imported, exported, or re-exported any of the covered species (bluefin tuna, swordfish, SBT, frozen bigeye tuna) were required to obtain the HMS ITP. Associated reporting requirements included completion and filing of statistical documents, re-export certificates, and biweekly reports. Since implementation of the unified program, NMFS has identified a number of adjustments that are necessary to improve the program's effectiveness and enforceability. These adjustments, along with the initial implementation of the BCD program and several other proposed actions in this rule, are classified into three areas: permitting, reporting, and regulatory structure and clarifications.

**Permitting**

Several possible adjustments in permitting requirements under the HMS ITP program were considered for the proposed rule. First, the proposed rule considers whether or not to maintain the current requirement that the entity responsible for obtaining the HMS ITP is the ''consignee'' as indicated on U.S. Customs and Border Protection (CBP) entry documentation. Several alternative entities were considered for this responsibility, in order to clearly and appropriately identify the entity that would have the most consistent access to the records necessary for reporting. Ultimately, the ''consignee'' was identified as the individual who has the best access to necessary records; maintaining this requirement would also provide continuity with existing regulations.

Second, the proposed rule would adjust the regulations to clarify that if a foreign entity is importing to, or exporting from, the United States, their U.S. resident agent or U.S. resident corporate surety provider would be required to obtain the HMS ITP. Further, a resident agent or corporate surety provider would be required to have a U.S. tax identification number to obtain an HMS ITP. These clarifications are necessary to provide consistency with CBP regulations, support regulatory enforcement, and clarify operational procedures for foreign companies wishing to trade product covered by the HMS ITP program in the United States.

Third, the proposed rule would synchronize ITP regulations with the NMFS Southeast Region regulations by requiring permit holders to submit their application at least 30 days before the date upon which the applicant wants the permit to be in effect. It would also remove the regulatory language that requires NMFS to issue an ITP no later than 30 days after a complete application is received. The proposal would provide consistency within NMFS regulations, and give the applicant more input over when the permit is issued.

The fourth permitting issue addressed in the proposed rule would require that shark fin importers, exporters, and re-exporters (traders) obtain an HMS ITP for entry for consumption. Export of shark fins drives much of the Atlantic shark fishery and has contributed to the overfishing of several species and landing of prohibited species in the Atlantic and Gulf of Mexico. Draft Amendment 2 to the Consolidated HMS Fishery Management Plan (FMP) (72 FR 41392, July 27, 2007) states that dealers may receive up to $50 per pound for shark fins (dry weight). Several shark stock assessments were completed in 2005 and 2006 that determined that dusky sharks (landing of which is currently prohibited) and sandbar sharks are overfished with overfishing occurring, and that porbeagle sharks are overfished (71 FR 65086, November 7, 2006). Dusky sharks (before their landing was prohibited in 2000) and sandbar sharks have been heavily commercially exploited because of the high value of their fins. Draft Amendment 2 to the Consolidated HMS FMP proposes management measures to rebuild these overfished stocks and prevent overfishing (72 FR 41392, July 27, 2007), and NMFS has previously implemented regulations to control the shark fishery by limiting the amount of shark fins that can be landed relative to the total weight of sharks landed (67 FR 6194, February 11, 2002). Once shark fins pass beyond the first-receiver of the shark products, it is difficult to track compliance with the shark fishery regulations or trace shark fins to their eventual export. Through this proposed rule, NMFS is proposing to identify the individuals involved in the shark fin trade to gain a better understanding of shark fin commerce, as well as assist with domestic enforcement of shark fishery regulations. Although the shark fin trade appears to primarily drive the shark fisheries in the Atlantic and Gulf of Mexico, limiting the permitting requirement to traders of shark fins from these areas could make it easier to circumvent the regulations. Therefore, NMFS is proposing to require an ITP for traders in shark fins from all ocean areas.

**Reporting**

Three reporting issues are addressed in the proposed rule. The first proposed regulatory adjustment would clarify that reports must be received by NMFS by the 10th or 25th of each month (depending upon the reporting period), rather than postmarked by those dates, and would provide for the use of FAX for submitting HMS ITP reports. This adjustment was proposed to clarify the HMS ITP regulations regarding use of faxes, and to establish consistency within HMS regulations regarding the use of the date NMFS receives a document (received-by date) rather than postmark date, since it has also been proposed in Draft Amendment 2 to the Consolidated HMS FMP (72 FR 41392, July 27, 2007). The use of a received-by date is preferred because postmark dates are not provided on a consistent basis. This adjustment is also proposed in this rule for biweekly reporting by Atlantic Tunas Dealer Permit holders. NMFS also considered removing the requirement for copies or originals of import statistical documents to be provided within 24 hours of consignment entry; however, the proposed rule would maintain the requirement to better support regulatory enforcement and provide continuity in the regulations.

The second issue considered for the proposed rule includes the initial implementation of the Atlantic BCD program under ICCAT Recommendation 07–10. The BCD program would expand the ICCAT bluefin tuna statistical document program to incorporate consignment tracking beginning with documentation of vessel catch/harvest. The proposed rule would initially implement the BCD program for U.S. Atlantic bluefin tuna commercial fisheries, and all bluefin tuna imports, exports and re-exports. The United States has a sophisticated reporting program already in place that requires provision of commercial Atlantic bluefin tuna landings data to NMFS within 24 hours of landing, and identifies each landed fish with a unique, non-transferable tag assigned to the permitted dealer who receives the fish. The operational adjustments for implementing the BCD program for U.S. commercial fisheries and trade are expected to be relatively small and attainable by the international implementation date of July 1, 2008, which reflects the commitment under the International Convention for the Conservation of Atlantic Tunas.

Third, the rule would provide HMS ITP holders that export domestically landed bluefin tuna with the option of reducing their reporting burden by coordinating with the Atlantic Tunas Dealer Permit (ATDP) holder who first purchased the bluefin tuna (frequently these are the same individuals). The rule proposes to allow the HMS ITP holder to forgo biweekly reporting of domestically landed bluefin tuna exports as long as all information required for bluefin tuna exports on the International Trade biweekly is submitted on the biweekly report from the ATDP holder. The purpose of this regulatory adjustment is to clarify reporting responsibilities and reduce reporting burden.

**Regulatory Structure and Clarifications**

The first regulatory change under this heading in the proposed rule would adopt the new definition of ''import'' included in the Magnuson-Stevens Act as amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (Magnuson-

Stevens Reauthorization Act), Pub. L. 109–479 (2007). This new definition could be interpreted more broadly than the current definition included in the HMS ITP regulations at 50 CFR part 300 subpart M, and could result in an unintended interpretation of the HMS ITP regulations to require statistical documentation for products moving between the United States and its insular possessions with separate customs territories. Therefore, the proposed rule clarifies the new definition to ensure that the intent of the HMS ITP program to exclude products imported between the U.S. and insular possessions from this proposed rule's permitting and reporting requirements. The other alternatives would not adopt the definition included in the statute, or would adopt the definition without the additional clarification.

Second under this category, the proposed rule addresses verification of the identity of foreign officials who validated statistical documents. ICCAT has established a password-protected website that identifies officials authorized to validate statistical documents. NMFS considered using this website to ensure that imports under the HMS ITP program were properly validated, including requiring importers to verify the applicable information included on the website. However, that alternative would compromise the privacy of the website by requiring release of the password to HMS ITP holders, and would increase the reporting burden on U.S. importers. Therefore, for this issue the proposed rule would not require any regulatory adjustments at this time, and multilateral discussions at ICCAT would be pursued to establish a consistent international approach for determining the validity of statistical document validation, including the possibility of allowing importer access to the ICCAT password-protected website.

Third, the rule proposes that NMFS codify the new Harmonized Tariff Schedule (HTS) codes implemented by the U.S. International Trade Commission (ITC) in Publication 3898, published in December 2006 and made effective by Presidential Proclamation 80–97 (72 FR 453, January 4, 2007) in February 2007. Since all products entering or exiting the United States must be identified by an HTS code, NMFS uses these codes to clearly identify the product to which trade related regulatory text applies. The rule proposes to update NMFS regulatory text at 50 CFR 300.184 with the new HTS codes for swordfish products adopted by the ITC. NMFS also considered adopting a higher hierarchical level of HTS coding to minimize the potential for future regulatory adjustments, but selected the more consistent and clear method for product identification for inclusion in the proposed rule.

Fourth, the proposed rule would clarify that all individuals who participate in activities that require an HMS ITP must abide by the reporting requirements, regardless of whether or not the individuals in fact obtain the HMS ITP, as required.

**Authorities**

The Atlantic Tunas Convention Act (ATCA) of 1975 (16 U.S.C. 971 *et seq.*) authorizes the promulgation of regulations as may be necessary and appropriate to implement ICCAT recommendations. The Tuna Conventions Act of 1950 (TCA) (16 U.S.C. 951 *et seq.*) authorizes rulemaking to carry out IATTC recommendations. NMFS manages the Atlantic swordfish and tuna fisheries in accordance with the Consolidated HMS FMP (71 FR 58058, October 2, 2006). Regulations implementing the Consolidated HMS FMP at 50 CFR part 635 were promulgated under the authorities of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and ATCA. Regulations implementing international trade provisions for HMS at 50 CFR part 300 subpart M were promulgated under the authorities of the Magnuson-Stevens Act, ATCA, and the TCA.

NMFS manages swordfish and tuna in the Pacific Ocean under the Western Pacific Pelagics Fishery Management Plan that was prepared by the Western Pacific Fishery Management Council. Regulations implementing that plan, at 50 CFR parts 300 and 660, were promulgated under the authorities of the ATCA, TCA and the Magnuson-Stevens Act, respectively. An FMP for U.S. West Coast HMS was developed by the Pacific Fishery Management Council (69 FR 18444, April 7, 2004). Other authorities relevant to Pacific management include the South Pacific Tuna Act of 1988 (16 U.S.C. 973 *et seq.*), the High Seas Fishing Compliance Act (16 U.S.C. 5501 *et seq.*), the U.S.-Canada Albacore Treaty, and the Western and Central Pacific Fisheries Convention Implementation Act (Public Law 109–479).

Customs requirements pertaining to the import and export of product harvested by national and international swordfish and tuna fisheries include those under 19 U.S.C. 1 *et seq.* and CBP regulations, under title 19 of the CFR.

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator (AA) has determined that this proposed rule is consistent with the Consolidated HMS FMP, other provisions of the Magnuson-Stevens Act, the ATCA, the TCA, and other applicable law, subject to further consideration after public comment. The AA has preliminarily determined that this proposed rule is necessary to implement the recommendations of ICCAT and IATTC, and is necessary for the management of bluefin tuna, bigeye tuna, swordfish, and sharks.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impacts this proposed rule would have, if adopted, on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of the preamble and the SUMMARY section of the preamble. A summary of the economic analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The proposed programs could affect approximately 406 ATDP holders, 230 HMS ITP holders, and approximately 100 individuals who participate in international trade of shark fins, all of which are considered small entities. According to the RFA, a wholesale fish business is defined as a small entity if it employs 100 or fewer. Impacts to these entities could occur in two areas - permitting and reporting. NMFS expects only minor negative economic impacts from the proposed rule because the proposed measures only involve adjusting the permitting and reporting requirements. A description of the alternatives, associated requirements, and estimated costs follows.

The issues addressed by the proposed rule are subdivided into three categories: ''permitting,'' ''reporting'' and ''regulatory structure and clarification.'' Only two of the issues under the category of ''permitting'' include alternatives that could have economic impacts. For the issue of identification of the entity responsible for obtaining the HMS ITP in importing situations, and thus for fulfilling subsequent reporting requirements, the ''No Action'' alternative is included in the proposed rule. This would continue to require the consignee as indicated in CBP import documentation to be the

responsible party. The annual costs associated with this alternative are the costs associated with permitting (including the cost of the permit, mailing costs and time for filling out the application — estimated at $26.75 per applicant) and the cost of reporting (including filling out and submitting the report forms — estimated at $102 per dealer for biweekly reports and $94 per dealer for trade tracking documentation, for a total of $196 per dealer). Alternative Two would require that the consignee on the bill of lading obtain an HMS ITP in addition to the consignee on CBP entry documentation. The overall negative economic impact for this alternative would increase based on the number of consignees identified on import bills of lading that differ from consignees on CBP documentation. NMFS estimates the cost of this alternative to be twice that of the ''No Action'' Alternative included in the proposed rule, assuming that there is one additional permit holder for each current permit holder. Costs per dealer would be the same as for the ''No Action'' Alternative included in the proposed rule. For Alternative Three, which would require the importer of record to obtain the HMS ITP, economic impacts are estimated to be approximately the same as the ''No Action'' Alternative included in the proposed rule, using the assumption that there would be approximately the same number of importers of record identified on CBP entry documentation as consignees for consignments of products addressed under HMS ITP regulations.

The second permitting issue with alternatives that could have economic impacts is shark fin trader permitting. The proposed rule would require that shark fin traders obtain an HMS ITP. NMFS anticipates that approximately 100 entities are expected to require the HMS ITP for shark fin trading. Since there would be no reporting requirements associated with this permit, the only costs are for obtaining the permit ($26.75 per dealer). The other alternative considered for this issue was the ''No Action'' Alternative. The permitting ($26.75) and reporting ($196) related costs of this alternative would apply for each current ITP holder.

The second category of issues addressed in the proposed rule is under the heading of ''Reporting.'' None of the alternatives for these issues would change the number of entities required to obtain an HMS ITP, so there would be no permitting related costs for any of these issues.

The first issue under the category of ''Reporting'' that has reporting-associated economic impacts includes alternatives that would adjust reporting requirements for when and how report submission would be required. Alternative One is the ''No Action'' alternative, and would not change any reporting regulations or associated annual costs, which are estimated at $196 per dealer. Alternative Two would rescind the requirement for copies of import statistical documents to be faxed to NMFS within 24 hours of receipt by an importer. This alternative would provide a slightly positive economic benefit in the form of a slightly reduced time burden for import reporting. Dealers would still be required to fill out and mail import statistical documents twice per month. The Preferred (third) Alternative would adjust HMS ITP and ATDP reporting regulations to use a ''received-by'' date rather than a postmark date for determining dealer compliance with required report submittal schedules. The ITP regulations would also be clarified to indicate when use of a fax machine would be an acceptable method for submitting a report. This alternative is expected to have no economic consequences, since it would not impact reporting frequency.

The second reporting-related issue considers alternatives to initially implement ICCAT Recommendation 07–10 and the new BCD program. The proposed rule (Preferred Alternative) would implement preliminarily the program for commercial U.S. Atlantic bluefin tuna fisheries and bluefin tuna imports, exports and re-exports as part of a program that will apply to all ICCAT member nations. The BCD program would require the use of new forms with fields similar to the ICCAT bluefin tuna statistical document that was in place before the BCD program was implemented. The change in reporting burden would only affect HMS ITP holders that re-export untagged bluefin tuna. When re-exporting an untagged bluefin tuna, the HMS ITP holder would be required to send a copy of the re-export certificate to the ICCAT Secretariat and importing nation within five working days via addresses and information provided by NMFS. The costs per transaction could range from zero for electronic transmission of the documents, to approximately $100 for mailing, for an average of $50 per transaction. In 2006, 17 consignments would have been subject to this additional cost. In addition, a time burden of .25 hours per consignment would have resulted in an additional 4.25 aggregate hours for a total annual cost of $64, or $3.75 per transaction. There would be no additional costs for the No Action alternative, with current annual average costs for statistical document program reporting at $196 per dealer.

The last issue under this category addresses reporting of Atlantic bluefin tuna exports. The Preferred Alternative would provide a positive economic impact, reducing the current reporting burden for individuals who hold both an ATDP and HMS ITP by clarifying that bluefin tuna exports would only need to be reported on one biweekly report. This action could positively affect the 64 individuals who concurrently hold an ATDP and HMS ITP and could save an estimated $51 per dealer per year. In addition, this alternative could reduce the reporting burden for HMS ITP holders who purchase bluefin tuna from an ATDP holder, with an estimated savings similar to those for individuals holding both permits. Alternative One, the ''No Action'' alternative, would continue to require reporting for both permits, and is estimated to cost each impacted dealer approximately $102 per year. Alternative Two would require that operational procedures were adjusted to mirror the current regulations. The economic impact of Alternative Two would be the same as that estimated for the ''No Action'' alternative.

The last category of issues addressed in the proposed rule is ''Regulatory Structure and Clarification,'' and includes two issues that could have economic consequences. The first issue is the implementation of the new definition of ''import'' included in the Magnuson-Stevens Act as amended by the Magnuson-Stevens Reauthorization Act. Both the ''No Action'' Alternative and the Preferred Alternative would have the same economic consequences, which would be the permitting and reporting costs associated with the current HMS ITP program, averaged at $222.75 per dealer per year. The second alternative would adopt the Magnuson-Stevens Act definition of ''import,'' without distinguishing that consignments between the United States and its insular possessions with separate customs territories would be considered domestic interactions, as intended by RFMO consignment programs. If such consignments did require permitting and reporting under the HMS ITP program, negative economic consequences would occur which are currently unknown but, based in part on the amount of product and number of participating dealers, are expected to be minor in nature. For example, an average of four consignments from Guam to ports under

U.S. Customs authority have occurred each year from 2002 through 2007. The estimated annual impact per dealer (approximately four dealers) would be $223.

The last issue considered in this proposed rule that could have economic impacts addresses the verification of foreign validating officials for imports. The proposed rule includes no regulatory changes for this issue. Under the Preferred Alternative, NMFS would pursue further international coordination on this issue, and there would be no economic related consequences. Likewise, the ''No Action'' Alternative would not have economic consequences since it does not require any current or additional action. Alternative Two could have considerable negative economic consequences since it would require that importers check the password-protected ICCAT website to determine whether validating officials are authorized government representatives. This alternative would require computer hardware and software with Internet access.

Fishermen, fish dealer permit holders, and fishery managers involved in these fisheries must comply with a number of international agreements, domestic laws, regulations and FMPs. These include, but are not limited to, the International Convention for the Conservation of Atlantic Tunas, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. NMFS strives to ensure consistency among the regulations with Fishery Management Councils and other relevant agencies. NMFS does not believe that the proposed alternatives would conflict with any relevant regulations, federal or other.

One of the requirements of an IRFA is to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. Economic impacts are discussed above and below. Additionally, the RFA Section 603(c)(1)-(4)) lists four categories of options which should be discussed. These categories are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule for small entities.

Under the first and fourth categories listed above, NMFS considers all dealers to be ''small entities.'' Thus, in order to meet the objectives of this proposed rule and address management concerns, NMFS cannot exempt small entities or change the reporting requirements for small entities.

Category Two includes options for clarifying, simplifying, and consolidating compliance and reporting requirements for small entities. Many of the measures proposed in this rule satisfy the goal of Category Two by simplifying or clarifying the existing dealer permitting or reporting structure in several instances, and by seeking further international clarity for several issues that cannot be implemented under the current program. Specifically, the proposed rule would clarify who is the entity responsible for obtaining the HMS ITP in cases involving foreign importers and would synchronize requirements between HMS ITPs and NMFS regional permits. Although alternatives are considered for modifying the entity responsible for obtaining a permit based on CBP entry documentation, the proposed rule does not modify the current regulations, which is in effect the simplest of the alternatives considered.

The proposed rule would reduce and simplify reporting requirements so that reporting may be combined in certain instances when an individual holds both the HMS ITP and the ATDP, which have similar reporting requirements. A dealer holding one of these permits can also coordinate with a dealer who handles the same individual bluefin tuna but holds the other corresponding permit. The proposed rule would also clarify the use of faxes for report submission and would further consistency with other HMS regulations by establishing the ''received by'' date as the date used for compliance determinations. There would be some increase in reporting burden and cost because of the requirement for international communication of consignment documents directly to the ICCAT secretariat and importing nation's government agency, however costs should be minimized since affected businesses are encouraged to submit the required documentation electronically.

The proposed rule also directly addresses issues of regulatory structure and clarification. The proposed rule would update certain HTS codes which would serve in part to clarify reporting. The proposed rule would also adopt the Magnuson-Stevens Act definition of import, with a clarifying caveat that consignments of affected product between insular possessions and the United States are not considered imports. Finally, the proposed rule would clarify that the regulatory requirements in 50 CFR part 300 subpart M would apply to all entities engaging in covered activities, rather than just those who obtain the required permit. Alternatives for verification of validating authorities are also considered, but because of technical difficulties, no action requiring verification of validation is included in the proposed rule.

The third category identified in the RFA, ''use of performance rather than design standards,'' is not applicable, since ICCAT has very specific requirements for implementation of the trade tracking programs addressed in this action. Although the shark fin trade is not currently covered by an ICCAT recommendation, in order to address category two and maintain a simple structure for HMS trade permits, shark fin traders would be required to obtain an HMS ITP under the proposed rule.

This proposed rule contains revisions to collection-of-information requirements previously approved by OMB under the HMS Permitting Family of Forms (0648–0327) and the HMS Dealer Reporting Family of Forms (0648–0040). The revisions are subject to review and approval by OMB under the Paperwork Reduction Act, and have been submitted to OMB for approval. In the HMS Permitting Family of Forms, the instrument being revised is the application for the HMS ITP for Atlantic coast dealers that import, export, or re-export bluefin tuna, southern bluefin tuna, frozen bigeye tuna, and swordfish, the public reporting burden for which is estimated at 0.08 hours (5 minutes) per response. In the HMS Dealer Reporting Family of Forms, the instruments being revised are the bluefin tuna statistical document and re-export certificate, the public reporting burden for which is estimated at .08 hours (5 minutes) per form. The statistical document will be replaced by a catch document with an equivalent reporting burden. The reporting burden for re-exports of untagged bluefin tuna is estimated to be an additional .25 hours (15 minutes) per form. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether each of these proposed

information collections is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS at the **ADDRESSES** above, and e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

**Public Hearings**

Public hearings will be held as follows:

1. April 23, 2008, 10 a.m. to 12 p.m., NMFS Southwest Regional Office, Santa Rosa Field Office, 777 Sonoma Avenue, Santa Rosa, CA 95404.

2. April 24, 2008, 10 a.m. to 12 p.m., NMFS Southwest Regional Office, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.

3. April 25, 2008, 2 p.m. to 4 p.m., NMFS Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

4. April 28, 2008, 2 p.m. to 4 p.m., Embassy Suites Hotel, 3974 Northwest South River Drive, Miami, FL 33142.

5. April 29, 2008, 2 p.m. to 4 p.m., NMFS, Southeast Fisheries Science Center, 3500 Delwood Beach Road, Panama City, FL 32408.

The hearing locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dianne Stephan at (978) 281–9260, at least 7 business days prior to the meeting.

**List of Subjects**

*50 CFR Part 300*

Administrative practice and procedure, Exports, Fish, Fisheries, Fishing, Imports, Reporting and recordkeeping requirements, Treaties.

*50 CFR Part 635*

Fisheries, Fishing, Fishing vessels, Imports, Reporting and recordkeeping requirements, Treaties.

Dated: March 31, 2008.

**James W. Balsiger**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For reasons set out in the preamble, 50 CFR part 300 subpart M and part 635 are proposed to be amended as follows:

**CHAPTER III**

## PART 300—INTERNATIONAL FISHERIES REGULATIONS

### Subpart M—International Trade Documentation and Tracking Programs for Highly Migratory Species

1. The authority citation for subpart M of part 300 continues to read as follows:

**Authority:** 16 U.S.C. 951–961 and 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 300.181, the definitions for ''Fish or fish products regulated under this subpart'', ''Import'', and ''Tag'' are revised, and the definitions of ''BCD'', ''BCD tag'', ''Consignment document'', ''Consignment documentation programs'', and ''Shark fin'' are added in alphabetical order to read as follows:

**§ 300.181 Definitions.**

* * * * *

*BCD tag* means a numbered tag affixed to a bluefin tuna issued by any country in conjunction with a catch statistics information program and recorded on a (BCD).

* * * * *

*Bluefin Tuna Catch Document (BCD)* means an ICCAT bluefin tuna catch document.

* * * * *

*Consignment document* means either an ICCAT Atlantic BCD or a catch document issued by a nation to comply with the ICCAT BCD program; or an ICCAT, IATTC, IOTC, or CCSBT statistical document or a statistical document issued by a nation to comply with such statistical document programs.

*Consignment documentation programs* means the ICCAT, IOTC, IATTC or CCSBT catch document or statistical document programs.

* * * * *

*Fish or fish products regulated under this subpart* means bluefin tuna, frozen bigeye tuna, southern bluefin tuna and swordfish and all such products of these species, except parts other than meat (e.g., heads, eyes, roe, guts, and tails), and shark fins.

* * * * *

*Import* means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing or introduction constitutes an importation within the meaning of the customs laws of the United States. Import, for purposes of this subpart, does not include any activity described in the previous sentence with respect to fish caught in the exclusive economic zone or by a vessel of the United States. For purposes of this subpart, goods brought into the United States from a U.S. insular possession, or vice–versa, are not considered imports.

* * * * *

*Shark fin*, for purposes of this subpart, means any fin removed from a shark, which is an animal of the Linnaean taxonomic superorder Selachimorpha, subclass Elasmobranchii, class Chondrichthyes.

* * * * *

*Statistical document* means an ICCAT, IATTC, IOTC, or CCSBT statistical document, or a statistical document issued by a nation to comply with such statistical document programs.

*Statistical document program* means either the ICCAT, IOTC, IATTC or CCSBT statistical document program.

* * * * *

*Tag* means either a dealer tag or a BCD tag.

* * * * *

3. In § 300.182, paragraphs (a), (b) and (c) are revised to read as follows:

**§ 300.182 HMS international trade permit.**

(a) *General.* An importer, entering for consumption fish or fish products regulated under this subpart from any ocean area into the United States, or an exporter exporting or re–exporting such product, must possess a valid trade permit issued under this section. Importation of fish or fish products regulated under this subpart by nonresident corporations is restricted to those entities authorized under 19 CFR 141.18. A resident agent or resident corporate surety provider, as specified under 19 CFR 141.18, must possess a valid trade permit when acting on behalf of a nonresident corporation when entering for consumption, exporting, or re–exporting fish or fish products regulated under this subpart from any ocean area.

(b) *Application.* A person must apply for a permit in writing on an appropriate form obtained from NMFS. The application must be completed, signed by the applicant, and submitted with required supporting documents, at least 30 days before the date on which the applicant wants to have the permit made effective. Application forms and instructions for their completion are available from NMFS.

(c) *Issuance.* NMFS will notify the applicant of any deficiency in the application, including failure to provide information or reports required under this subpart. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

* * * * *

4. Section 300.183 is revised to read as follows:

**§ 300.183 Permit holder reporting and recordkeeping requirements.**

(a) *Biweekly reports.* Any person required to obtain a trade permit under § 300.182 must submit to NMFS, on forms supplied by NMFS, a biweekly report of entries for consumption, exports and re-exports of fish and fish products regulated under this subpart except shark fins.

(1) The report required to be submitted under this paragraph (a) must be received within 10 days after the end of each biweekly reporting period in which fish or fish products regulated under this subpart except shark fins were entered for consumption, exported, or re-exported. The bi-weekly reporting periods are the first day to the 15th day of each month, and the 16th day to the last day of each month.

(2) Each report must specify accurately and completely the requested information for each consignment of fish or fish products regulated under this subpart, except shark fins, that is entered for consumption, exported, or re-exported.

(3) A biweekly report is not required for export consignments of bluefin tuna when the information required on the biweekly report has been previously supplied on a biweekly report submitted under § 635.5(b)(2)(i)(B) of this title, provided the person required to obtain a trade permit under § 300.182 retains, at his/her principal place of business for a period of 2 years from the date on which each report was submitted to NMFS, a copy of the biweekly report which includes the required information and is submitted under § 635.5(b)(2)(i)(B) of this title.

(b) *Recordkeeping.* Any person required to obtain a trade permit under § 300.182 must retain, at his/her principal place of business, a copy of each biweekly report and all supporting records for a period of 2 years from the date on which each report was submitted to NMFS.

(c) *Other requirements and recordkeeping requirements.* Any person required to obtain a trade permit under § 300.182 is also subject to the reporting and recordkeeping requirements identified in § 300.185.

(d) *Inspection.* Any person authorized to carry out the enforcement activities under the regulations in this subpart (authorized person) has the authority, without warrant or other process, to inspect, at any reasonable time: fish or fish products regulated under this subpart, biweekly reports, statistical documents, catch documents, re-export certificates, relevant sales receipts, import and export documentation, or other records or reports made, retained, or submitted pursuant to this subpart. A permit holder must allow NMFS or an authorized person to inspect and copy, for any fish or fish products regulated under this subpart, any import and export documentation and any reports required under this subpart, and the records, in any form, on which the completed reports are based, wherever they exist. Any agent of a person issued a trade permit under this part, or anyone responsible for importing, exporting, storing, packing, or selling fish or fish products regulated under this subpart, shall be subject to the inspection provisions of this section.

(e) *Applicability of reporting and recordkeeping requirements.* Reporting and recordkeeping requirements in this subpart apply to any person engaging in activities that require a trade permit, as set forth in § 300.182(a), regardless of whether a trade permit has been issued to that person.

5. In § 300.184, the section heading, introductory text, and paragraphs (a)(1) introductory text, (b)(1) introductory text, (c)(1) introductory text, and (d)(1) are revised and paragraph (e) is added to read as follows:

**§ 300.184 Species subject to permitting, documentation, reporting, and recordkeeping requirements.**

The following fish or fish products are subject to the requirements of this subpart, regardless of ocean area of catch.

(a) * * *

(1) The requirements of this subpart apply to bluefin tuna products including those identified by the following subheading numbers from the Harmonized Tariff Schedule of the United States (HTS):

* * * * *

(b) * * *

(1) The requirements of this subpart apply to southern bluefin tuna products including those identified by the following subheading numbers from the HTS:

* * * * *

(c) * * *

(1) The requirements of this subpart apply to frozen bigeye tuna products including those identified by the following subheading numbers from the HTS:

* * * * *

(d) * * *

(1) The requirements of this subpart apply to swordfish products including those identified by the following subheading numbers from the HTS:

(i) Fresh or chilled swordfish, steaks (No. 0302.67.00.10).

(ii) Fresh or chilled swordfish (No. 0302.67.00.90), excluding fish fillets, steaks, and other fish meat of HTS heading 0304.

(iii) Frozen swordfish, steaks (No. 0303.61.00.10).

(iv) Frozen swordfish (No. 0303.61.00.90), excluding fillets, steaks and other fish meat of HTS heading 0304.

(v) Fresh, or chilled swordfish, fillets and other fish meat (No. 0304.11.00.00).

(vi) Frozen swordfish, fillets (No. 0304.21.00.00).

(vii) Swordfish in bulk or in immediate containers weighing with their contents over 6.8 kg each (No. 0304.91.10.00).

(viii) Swordfish, other (No. 0304.91.90.00).

* * * * *

(e) *Shark fin.* The permitting requirements of this subpart apply to shark fin products including those identified by the following subheading number from HTS: No. 0305.59.20.00.

6. In § 300.185:

A. The section heading and paragraphs (a)(1), (a)(2(i) through (iv), (a)(3), (b)(1), (b)(2), (b)(3), (c)(1), (c)(2)(i), (c)(2)(ii), (c)(3) and (d) are revised.

B. Paragraph (e) is redesignated as paragraph (f).

C. New paragraphs (a)(2)(v) through (a)(2)(ix) and (e) are added.

The revisions and additions read as follows:

**§ 300.185 Documentation, reporting and recordkeeping requirements for consignment documents and re-export certificates.**

(a) * * *

(1) *Applicability of requirements.* The documentation requirements in paragraph (a)(2) of this section apply to all imports of fish or fish products regulated under this subpart, into the Customs territory of the United States, except shark fins, or except when entered as a product of an American fishery landed overseas (HTS heading 9815). For insular possessions with customs territories separate from the Customs territory of the United States, documentation requirements in paragraph (a)(2) of this section apply only to entries for consumption. The reporting requirements of paragraph

(a)(3) of this section do not apply to fish products destined from one foreign country to another which transit the United States or a U.S. insular possession and are designated as an entry type other than entry for consumption as defined in § 300.181.

(2) * * *

(i) All fish or fish products except for shark fins, regulated under this subpart, imported into the Customs territory of the United States or entered for consumption into a separate customs territory of a U.S. insular possession, must, at the time of presenting entry documentation for clearance by customs authorities (e.g., CBP Forms 7533 or 3461 or other documentation required by the port director) be accompanied by an original, completed, approved, validated, species-specific consignment document.

(ii) Imports of bluefin tuna which were re-exported from another nation, must also be accompanied by an original, completed, approved, validated, species-specific re-export certificate.

(iii) Imports of fish or fish products regulated under this subpart, other than shark fins, that were previously re-exported and were subdivided or consolidated with another consignment before re-export, must also be accompanied by an original, completed, approved, validated, species-specific re-export certificate.

(iv) All other imports of fish or fish products regulated under this subpart, except shark fins, that have been previously re-exported from another nation, should have the intermediate importers certification of the original statistical document completed.

(v) Consignment documents must be validated as specified in § 300.187 by a responsible government official of the flag country whose vessel caught the fish (regardless of where the fish are first landed). Re-export certificates must be validated by a responsible government official of the re-exporting country.

(vi) A permit holder may not accept an import without the completed consignment document or re-export certificate as described in paragraphs (a)(2)(i) through (a)(2)(v) of this section.

(vii) For fish or fish products except shark fins regulated under this subpart that are entered for consumption, the permit holder must provide on the original consignment document that accompanied the consignment the correct information and importer's certification specified in § 300.186, and must note on the top of the consignment document the entry number assigned at the time of filing an entry summary (e.g., CBP Form 7501 or electronic equivalent) with customs authorities.

(viii) Bluefin tuna, imported into the Customs territory of the United States or entered for consumption into the separate customs territory of a U.S. insular possession, from a country requiring a BCD tag on all such bluefin tuna available for sale, must be accompanied by the appropriate BCD tag issued by that country, and said BCD tag must remain on any bluefin tuna until it reaches its final destination. If the final import destination is the United States, which includes U.S. insular possessions, the BCD tag must remain on the bluefin tuna until it is cut into portions. If the bluefin tuna portions are subsequently packaged for domestic commercial use or re-export, the BCD tag number and the issuing country must be written legibly and indelibly on the outside of the package.

(ix) Customs forms can be obtained by contacting the local CBP port office; contact information is available at *www.cbp.gov*. For a U.S. insular possession, contact the local customs office for any forms required for entry.

(3) *Reporting requirements.* For fish or fish products regulated under this subpart, except shark fins, that are entered for consumption and whose final destination is within the United States, which includes U.S. insular possessions, a permit holder must submit to NMFS the original consignment document that accompanied the fish product as completed under paragraph (a)(2) of this section, to be received by NMFS along with the biweekly report as required under § 300.183(a). A copy of the original completed consignment document must be submitted by said permit holder, to be received by NMFS, at an address designated by NMFS, within 24 hours of the time the fish product was entered for consumption into the Customs territory of the United States, or the separate customs territory of a U.S. insular possession.

(b) * * *

(1) *Applicability of requirements.* The documentation and reporting requirements of this paragraph (b) apply to exports of fish or fish products regulated under this subpart, except shark fins, that were harvested by U.S. vessels and first landed in the United States, or harvested by vessels of a U.S. insular possession and first landed in that possession. This paragraph (b) also applies to products of American fisheries landed overseas.

(2) *Documentation requirements.* A permit holder must complete an original, approved, numbered, species-specific consignment document issued to that permit holder by NMFS for each export referenced under paragraph (b)(1) of this section. Such an individually numbered document is not transferable and may be used only once by the permit holder to which it was issued to report on a specific export consignment. A permit holder must provide on the consignment document the correct information and exporter certification. The consignment document must be validated, as specified in § 300.187, by NMFS, or another official authorized by NMFS. A list of such officials may be obtained by contacting NMFS. A permit holder requesting U.S. validation for exports should notify NMFS as soon as possible after arrival of the vessel to avoid delays in inspection and validation of the export consignment.

(3) *Reporting requirements.* A permit holder must ensure that the original, approved, consignment document as completed under paragraph (b)(2) of this section accompanies the export of such products to their export destination. A copy of the consignment document must be received by NMFS, at an address designated by NMFS, within 24 hours of the time the fish product was exported from the United States or a U.S. insular possession.

(c) * * *

(1) *Applicability of requirements.* The documentation and reporting requirements of this paragraph (c) apply to exports of fish or fish products regulated under this subpart, except shark fins, that were previously entered for consumption into the Customs territory of the United States or the separate customs territory of a U.S. insular possession, through filing the documentation specified in paragraph (a) of this section. The requirements of this paragraph (c) do not apply to fish or fish products destined from one foreign country to another which transit the United States or a U.S. insular possession and which are designated as an entry type other than entry for consumption as defined in § 300.181.

(2) * * *

(i) If a permit holder re-exports a consignment of bluefin tuna, or subdivides or consolidates a consignment of fish or fish products regulated under this subpart, other than shark fins, that was previously entered for consumption as described in paragraph (c)(1) of this section, the permit holder must complete an original, approved, individually numbered, species-specific re-export certificate issued to that permit holder by NMFS for each such re-export consignment. Such an individually numbered document is not transferable and may be used only once by the

permit holder to which it was issued to report on a specific re-export consignment. A permit holder must provide on the re-export certificate the correct information and re-exporter certification. The permit holder must also attach the original consignment document that accompanied the import consignment or a copy of that document, and must note on the top of both the consignment documents and the re-export certificates the entry number assigned by CBP authorities at the time of filing the entry summary.

(ii) If a consignment of fish or fish products regulated under this subpart, except bluefin tuna or shark fins, that was previously entered for consumption as described in paragraph (c)(1) of this section is not subdivided into sub-consignments or consolidated, for each re-export consignment, a permit holder must complete the intermediate importer's certification on the original statistical document and note the entry number on the top of the statistical document. Such re-exports do not need a re-export certificate and the re-export does not require validation.

* * * * *

(3) *Reporting requirements.* For each re-export, a permit holder must submit the original of the completed re-export certificate (if applicable) and the original or a copy of the original consignment document completed as specified under paragraph (c)(2) of this section, to accompany the consignment of such products to their re-export destination. A copy of the completed consignment document and re-export certificate (if applicable) must be submitted to NMFS, at an address designated by NMFS, and received by NMFS within 24 hours of the time the consignment was re-exported from the United States. Within five days of re-export of untagged Atlantic bluefin tuna, the permit holder must email, fax, or mail a copy of the completed consignment document and re-export certificate to the ICCAT Secretariat and the importing nation, at addresses designated by NMFS.

(d) *Document completion.* To be deemed complete, a consignment document or re-export certificate must be filled out according to the corresponding instructions for each document with all requested information provided.

(e) *Recordkeeping.* A permit holder must retain at his or her principal place of business, a copy of each consignment document and re-export certificate required to be submitted to NMFS pursuant to this section, and supporting records for a period of 2 years from the date on which it was submitted to NMFS.

* * * * *

7. In § 300.186 the section heading and paragraphs (a) and (b) are revised and paragraphs (c) through (h) are removed to read as follows:

**§ 300.186 Completed and approved documents.**

(a) *NMFS-approved consignment documents and re-export certificates.* A NMFS-approved consignment document or re-export certificate may be obtained from NMFS to accompany exports of fish or fish products regulated under this subpart from the Customs territory of the United States or the separate customs territory of a U.S. insular possession.

(b) *Nationally approved forms from other countries.* A nationally approved form from another country may be used for exports to the United States if that document strictly conforms to the information requirements and format of the applicable RFMO documents. An approved consignment document or re-export certificate for use in countries without a nationally approved form to accompany consignments to the United States may be obtained from the following websites, as appropriate: *www.iccat.org*, *www.iattc.org*, *www.ccsbt.org*, or *www.iotc.org*.

* * * * *

8. In § 300.187, paragraphs (a), (b), and (d) through (f) are revised to read as follows:

**§ 300.187 Validation requirements.**

(a) *Imports.* The approved consignment document accompanying any import of any fish or fish product regulated under this subpart must be validated by a government official from the issuing country, unless NMFS waives this requirement pursuant to an applicable RFMO recommendation. NMFS will furnish a list of countries for which government validation requirements are waived to the appropriate customs officials. Such list will indicate the circumstances of exemption for each issuing country and the non-government institutions, if any, accredited to validate statistical documents and re-export certificates for that country.

(b) *Exports.* The approved consignment document accompanying any export of fish or fish products regulated under this subpart must be validated, except pursuant to a waiver described in paragraph (d) of this section. Validation must be made by NMFS or another official authorized by NMFS.

* * * * *

(d) *Validation waiver.* Any waiver of government validation will be consistent with applicable RFMO recommendations concerning validation of consignment documents and re-export certificates. If authorized, such waiver of government validation may include exemptions from government validation for Pacific bluefin tuna with individual BCD tags affixed pursuant to paragraph (f) of this section or for Atlantic bluefin tuna with tags affixed pursuant to § 635.5(b) of this title. Waivers will be specified on consignment documents and re-export certificates or accompanying instructions, or in a letter to permit holders from NMFS.

(e) *Authorization for non-NMFS validation.* An official from an organization or government agency seeking authorization to validate consignment documents or re-export certificates accompanying exports or re-exports from the United States, which includes U.S. commonwealths, territories, and possessions, must apply in writing, to NMFS, at an address designated by NMFS for such authorization. The application must indicate the procedures to be used for verification of information to be validated; list the names, addresses, and telephone/fax numbers of individuals to perform validation; procedures to be used to notify NMFS of validations; and an example of the stamp or seal to be applied to the consignment document or re-export certificate. NMFS, upon finding the applicant capable of verifying the information required on the consignment document or re-export certificate, will issue, within 30 days, a letter specifying the duration of effectiveness and conditions of authority to validate consignment documents or re-export certificates accompanying exports or re-exports from the United States. The effective date of such authorization will be delayed as necessary for NMFS to notify the appropriate RFMO of other officials authorized to validate consignment document or re-export certificates. Non-government organizations given authorization to validate consignment documents or re-export certificates must renew such authorization on a yearly basis.

(f) *BCD tags*–(1) *Issuance.* NMFS will issue numbered BCD tags for use on Pacific bluefin tuna upon request to each permit holder.

(2) *Transfer.* BCD tags issued under this section are not transferable and are usable only by the permit holder to whom they are issued.

(3) *Affixing BCD tags.* At the discretion of permit holders, a tag

issued under this section may be affixed to each Pacific bluefin tuna purchased or received by the permit holder. If so tagged, the tag must be affixed to the tuna between the fifth dorsal finlet and the keel.

(4) *Removal of tags.* A tag, as defined in this subpart and affixed to any bluefin tuna, must remain on the tuna until it is cut into portions. If the bluefin tuna or bluefin tuna parts are subsequently packaged for transport for domestic commercial use or for export, the number of each dealer tag or BCD tag must be written legibly and indelibly on the outside of any package containing the bluefin tuna or bluefin tuna parts. Such tag number also must be recorded on any document accompanying the consignment of bluefin tuna or bluefin tuna parts for commercial use or export.

(5) *Labeling.* The tag number of a BCD tag affixed to each Pacific bluefin tuna under this section must be recorded on NMFS reports required by § 300.183, on any documents accompanying the consignment of Pacific bluefin tuna for domestic commercial use or export as indicated in § 300.185, and on any additional documents that accompany the consignment (e.g., bill of lading, customs manifest, etc.) of the tuna for commercial use or for export.

(6) *Reuse.* BCD tags issued under this section are separately numbered and may be used only once, one tag per Pacific bluefin tuna, to distinguish the purchase of one Pacific bluefin tuna. Once affixed to a tuna or recorded on any package, container or report, a BCD tag and associated number may not be reused.

9. Section 300.188 is revised to read as follows:

**§ 300.188 Ports of entry.**

NMFS shall monitor the importation of fish or fish products regulated under this subpart into the United States. If NMFS determines that the diversity of handling practices at certain ports at which fish or fish products regulated under this subpart are being imported into the United States allows for circumvention of the consignment document requirement, NMFS may undertake a rulemaking to designate, after consultation with the CBP, those ports at which fish or fish products regulated under this subpart from any ocean area may be imported into the United States.

10. In § 300.189, paragraphs (h) through (j), and (m) are revised and paragraph (n) is added to read as follows:

**§ 300.189 Prohibitions.**

* * * * *

(h) Validate consignment documents or re-export certificates without authorization as specified in § 300.187.

(i) Validate consignment documents or re-export certificates as provided for in § 300.187 with false information.

(j) Remove any NMFS-issued numbered tag affixed to any Pacific bluefin tuna or any tag affixed to a bluefin tuna imported from a country with a BCD tag program before removal is allowed under § 300.187; fail to write the tag number on the shipping package or container as specified in § 300.187; or reuse any NMFS-issued numbered tag affixed to any Pacific bluefin tuna, or any tag affixed to a bluefin tuna imported from a country with a BCD tag program, or any tag number previously written on a shipping package or container as prescribed by § 300.187.

(m) Fail to provide a validated consignment document for imports at time of entry into the Customs territory of the United States of fish or fish products regulated under this subpart except shark fins, regardless of whether the importer, exporter, or re-exporter holds a valid trade permit issued pursuant to § 300.182 or whether the fish products are imported as an entry for consumption.

(n) Import or accept an imported consignment of fish or fish products regulated under this subpart, except shark fins, without an original, completed, approved, validated, species-specific consignment document and re-export certificate (if applicable) with the required information and exporter's certification completed.

**CHAPTER VI**

## PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

11. The authority citation for 50 CFR part 635, continues to read as follows:

**Authority:** 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

**§ 635.2 [Amended]**

12. In § 635.2, the definition of ''Import'' is removed.

13. In § 635.5, paragraph (b)(2)(i)(B) is revised to read as follows:

**§ 635.5 Recordkeeping and reporting.**

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) *Bi-weekly reports.* Each dealer with a valid Atlantic tunas permit under § 635.4 must submit a complete bi-weekly report on forms available from NMFS for BFT received from U.S. vessels. For BFT received from U.S. vessels on the 1st through the 15th of each month, the dealer must submit the bi-weekly report form to NMFS, to be received by NMFS, not later than the 25th of that month. Reports of BFT received on the 16th through the last day of each month must be received by NMFS not later than the 10th of the following month.

* * * * *

[FR Doc. E8–7068 Filed 4–3–08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 071219865–7563–01]**

**RIN 0648–AP60**

## Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 9

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement measures in Amendment 9 to the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP). Amendment 9 was developed by the Mid-Atlantic Fishery Management Council (Council) to remedy deficiencies in the FMP and to address other issues that have arisen since Amendment 8 to the FMP became effective in 1999. Amendment 9 would establish multi-year specifications for all four species managed under the FMP (mackerel, butterfish, *Illex* squid (*Illex*), and *Loligo* squid (*Loligo*)) for up to 3 years; extend the moratorium on entry into the *Illex* fishery, without a sunset provision; adopt biological reference points recommended by the Stock Assessment Review Committee (SARC) for *Loligo*; designate essential fish habitat (EFH) for *Loligo* eggs based on best available scientific information; and prohibit bottom trawling by MSB-permitted vessels in Lydonia and Oceanographer Canyons.

**DATES:** Public comments must be received no later than 5 p.m., eastern standard time, on May 19, 2008.

**ADDRESSES:** A final supplemental environmental impact statement (FSEIS) was prepared for Amendment 9 that describes the proposed action and other

considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Amendment 9, including the FSEIS, the Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The FSEIS/RIR/IRFA is accessible via the Internet at *http://www.nero.nmfs.gov*.

You may submit comments, identified by RIN 0648–AP60, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal *http://www.regulations.gov;*
- Fax: (978) 281–9135, Attn: Carrie Nordeen;
- Mail to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on MSB Amendment 9.''

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF formats only.

**FOR FURTHER INFORMATION CONTACT:** Carrie Nordeen, Fishery Policy Analyst, 978- 281–9272, fax 978–281–9135.

**SUPPLEMENTARY INFORMATION:**

## Background

This amendment is needed to remedy deficiencies in the FMP and to address other issues that have arisen since Amendment 8 to the FMP (64 FR 57587, October 26, 1999) became effective in 1999. Amendment 8 was only partially approved by NMFS because the amendment inadequately addressed some Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements for Federal FMPs. Specifically, the amendment was considered deficient with respect to: Consideration of fishing gear impacts on EFH as they relate to MSB fisheries; designation of EFH for *Loligo* eggs; and the reduction of bycatch and discarding of target and non-target species in the MSB fisheries.

An earlier draft of Amendment 9, adopted by the Council on February 15, 2007, contained several management measures intended to address deficiencies in the MSB FMP that relate to discarding, especially as they affect butterfish. Specifically, these management measures would have attempted to reduce finfish discards by MSB small-mesh fisheries through mesh size increases in the directed *Loligo* fishery, removal of mesh size exemptions for the directed *Illex* fishery, and establishment of seasonal Gear Restricted Areas (GRAs). However, these specific management alternatives were developed in 2004, prior to the butterfish stock being declared overfished.

In February 2005, NMFS notified the Council that the butterfish stock was overfished and this triggered Magnuson-Stevens Act requirements to implement rebuilding measures for the stock. In response, Amendment 10 to the FMP was initiated by the Council in October 2005. Amendment 10 contains a rebuilding program for butterfish with management measures designed to reduce the fishing mortality on butterfish that occurs through discarding. Management measures that reduce the discarding of butterfish are expected to also reduce the bycatch of other finfish species in MSB fisheries. On June 13, 2007, the Council recommended that all management measures developed as part of Amendment 9 to correct deficiencies in the FMP related to bycatch of finfish, especially butterfish, be considered in Amendment 10. Accordingly, no action is proposed in Amendment 9 to address these issues. Through the development and implementation of Amendment 10, each of the measures to reduce the bycatch of finfish will be given full consideration. Additionally, Amendment 10 will include updated analyses on the effects of the alternatives and, as Amendment 10 is expected to be implemented soon after Amendment 9, no meaningful delay in addressing the bycatch deficiencies in the FMP should occur.

The final version of Amendment 9 contains alternatives that consider allowing for multi-year specifications and management measures, extending or eliminating the moratorium on entry to the directed *Illex* fishery, revising the biological reference points for *Loligo*, designating EFH for *Loligo* eggs, implementing area closures to reduce gear impacts from MSB fisheries on EFH of other federally-managed species, increasing the incidental possession limit for *Illex* vessels during a closure of the *Loligo* fishery, and requiring real-time electronic reporting via vessel monitoring systems in the *Illex* fishery. The Council held four public meetings on Amendment 9 during May 2007. Following the public comment period that ended on May 21, 2007, the Council adopted Amendment 9 on August 6, 2007.

This rule proposes management measures that were recommended by the Council as part of Amendment 9. Specifically, this rule proposes measures that would: Allow for multi-year specifications for all four species managed under the FMP (mackerel, butterfish, *Illex*, and *Loligo*) for up to 3 years; extend the moratorium on entry into the *Illex* fishery, without a sunset provision; adopt biological reference points for *Loligo* recommended by the SARC; designate EFH for *Loligo* eggs based on best available science information; and prohibit bottom trawling by MSB-permitted vessels in Lydonia and Oceanographer Canyons.

A Notice of Availability (NOA) for Amendment 9 was published on March 25, 2008. The comment period on the NOA ends on May 27, 2008.

## Proposed Measures

The proposed regulations are based on the description of the measures in Amendment 9; NMFS seeks comments on all of the measures in Amendment 9.

### *Multi-Year Specifications and Management Measures for MSB*

Regulations at § 648.21 specify that specifications for mackerel, *Illex*, and butterfish are recommended to the Council on an annual basis, and that specifications for *Loligo* may be specified for up to 3 years, subject to annual review. To streamline the administrative and regulatory process involved in setting specifications and management measures, Amendment 9 considered multi-year specifications for all four species: Mackerel, *Illex*, *Loligo*, and butterfish. Amendment 9 would not establish any specifications measures; rather it would affect the periodocity for specifying such regulatory measures through future Council actions. If the Council chose to propose multi-year specifications, Amendment 9 would require an annual review of updated information on the fishery by the MSB Monitoring Committee, as is the current practice, during the period of the multi-year specifications. The MSB Monitoring Committee would examine data collected from the fishery and resource surveys and would alert the Council of any changes, including those of stock status, that might require a revision to the specifications before the multi-year period elapses.

The proposed measure would allow for specifications and management measures for any or all of the four species in the FMP to be set for up to 3 years, subject to annual review. In the past, the specifications and management measures for MSB fisheries have remained fairly constant across years. This proposed measure would still enable the Council to respond to changes in stock status, in any given year, by modifying quotas or management measures. However, if changes were not necessary, the Council and NMFS would not have to recommend and implement annual specifications and management measures. Because this proposed measure is largely administrative, it is not anticipated that there will be effects on the environment. This proposed measure does have the potential to provide MSB fishery participants with an expanded planning horizon for harvesting and processing activities; therefore, it may have positive economic effects for MSB fishery participants.

*Moratorium on Entry into the Illex Fishery*

A fishery is considered overcapitalized when the harvest potential of the fishing fleet exceeds the harvest at optimum yield (OY). Amendment 9 considers the *Illex* fishery overcapitalized; therefore, this amendment considered alternatives that would limit the potential for increases in the harvest capacity of the large-scale, directed *Illex* fishery.

In order to prevent excess harvest capacity from developing in the large-scale, directed *Illex* fishery, a moratorium on new entry into this fishery was established in 1997. In the directed fishery, moratorium-permitted vessels are not subject to any daily *Illex* possession limit. As such, the maximum potential *Illex* landings for moratorium-permitted vessels are unlimited until 95 percent of the annual harvest quota has been achieved in any given year. Once 95 percent of the annual quota has been harvested, the possession limit for vessels with *Illex* moratorium permits becomes 10,000 lb (4.54 mt). The moratorium on new entry was initially scheduled to expire in 2002, but has been extended several times through framework actions. Currently, the moratorium is scheduled to expire in July 2009.

Throughout the year, a small-scale, incidental catch fishery for *Illex* is currently provided for through an open-access Federal permit that allows possession of up to 10,000 lb (4.54 mt) of *Illex* on a single trip. In addition to the 10,000–lb (4.54–mt) trip allowance for *Illex*, vessels in possession of this permit are also allowed to land 2,500 lb (1.13 mt) of *Loligo* squid and 2,500 lb (1.13 mt) of butterfish in a single trip. The Council has not proposed any modifications to this permit in Amendment 9.

Under the proposed *Illex* measure, the scheduled expiration of the moratorium would be eliminated. As such, new entry into the directed commercial fishery for *Illex* would be prohibited indefinitely. The transfer of moratorium permits from one participant to another would only be allowed through the transfer of ownership of a permitted vessel. Since its implementation in 1997, there has been a slight decline in the number of vessels issued an *Illex* moratorium permit in any given year, from a maximum of 77 in 1998, to 72 in 2003. Under the proposed action, the size of the directed *Illex* fleet could not expand beyond the number of permitted vessels in the year in which Amendment 9 is implemented, thereby preventing expansion in a fishery that is already overcapitalized and offering the greatest degree of protection to historic participants in the directed *Illex* fishery.

The proposed measure is anticipated to have economic benefits for historical participants already possessing *Illex* moratorium permits and the potential to negatively affect those wanting to become an *Illex* fishery participant in the future.

*Biological Reference Points for Loligo*

Regulations at § 600.315 state that conservation and management measures should be based upon the best scientific information available, and that FMPs should be amended on a timely basis, as new information indicates the necessity for change in objectives or management measures. Therefore, Amendment 9 considered revising the proxies for target and threshold fishing mortality rates, $F_{Target}$ and $F_{Threshold}$, respectively, for *Loligo* to reflect the analytical advice provided by the most recent *Loligo* stock assessment review committee (SARC 34). While Amendment 9 considered revising the formulas and values for these reference points, the function of the reference points remains unchanged. $F_{Target}$ is the basis for determining OY and $F_{Threshold}$ determines whether overfishing is occurring.

Because *Loligo* is a sub-annual species (i.e., has a lifespan of less than 1 year), the stock is solely dependent on sufficient recruitment year to year to prevent stock collapse. The status quo proxies for $F_{Target}$ (75 percent of the fishing morality rate supporting maximum sustainable yield ($F_{Max}$)) and $F_{Threshold}$ ($F_{Max}$) may be too liberal and subject the *Loligo* stock to overfishing. The revised proxies for $F_{Target}$ and $F_{Threshold}$ proposed in this rule are fixed values based on average fishing mortality rates achieved during a time period when the stock biomass was fairly resilient (1987 - 2000). The revised proxies are calculated as follows: $F_{Target}$ is the 75th percentile of fishing mortality rates during 1987 - 2000 and $F_{Threshold}$ is the average fishing mortality rates during the same period. The revised proxy for $F_{Target}$ (0.32 or 0.24 for trimesters and quarters, respectively) would be used as the basis for establishing *Loligo* OY. However, it should be noted that it is currently not possible to accurately predict *Loligo* stock biomass because recruitment, which occurs throughout the year, is highly variable inter-annually and influenced by changing environmental conditions.

Biological reference points that ensure an adequate number of spawners produce adequate recruitment in the subsequent year are considered most appropriate for squid species. However, until such reference points can be reliably estimated for the *Loligo* stock, the revised reference points in Amendment 9 and proposed in this rule would serve as an intermediate step for calculating harvest levels that are more robust, with respect to stock sustainability, than status quo reference points.

*Designation of EFH for Loligo Eggs*

Amendment 9 considered designating EFH for *Loligo* eggs in order to bring the FMP into compliance with the Magnuson-Stevens Act requirement that FMPs describe and identify EFH for each life history stage of a managed species. The MSB FMP currently identifies and describes EFH for all life stages of MSB species for which information is available, with the exception of *Loligo* eggs. *Loligo* eggs are found attached to rocks and boulders on sand or mud bottom, as well as attached to aquatic vegetation in coastal and offshore bottom habitats from Georges Bank southward to Cape Hatteras. Generally, the following conditions exist where *Loligo* egg EFH is found: Bottom water temperatures between 10° C and 23° C; salinities of 30 to 32 ppt; and depths less than 50 m. Locations of fishery interactions with *Loligo* eggs are reported in Hatfield, E. M. C. and S. X. Cadrin. 2002. Geographic and temporal patterns in size and maturity of the longfin inshore squid (*Loligo pealeii*) off the northeastern United States. Fish. Bull. 100 (2): 200–213.

This action proposes to add the above description of EFH for *Loligo* eggs to the

FMP. Some Council members expressed concern that the proposed *Loligo* egg EFH areas are based on anecdotal information (i.e., interviews with fishermen). Also, they considered it likely that the proposed EFH areas are not constant, but instead shift from year to year. Nevertheless, the information on the locations of *Loligo* eggs provided in Hatfield and Cadrin (2002) is the best scientific information that is currently available. Additionally, EFH designations are meant to include habitat areas used in different years. Failure to designate EFH for *Loligo* eggs in Amendment 9 would be inconsistent with the EFH requirements of the Magnuson-Stevens Act.

To the degree that EFH is vulnerable to damage by fishing and/or non-fishing activities, management oversight of these activities in areas designated as EFH for a given life stage of any managed resource will allow for direct and indirect benefits for that resource. That oversight cannot occur, however, without first identifying the geographical locations of EFH. Amendment 9 identifies EFH for *Loligo* eggs based upon documented observations. By implementing this action, fishing and/or non-fishing activities would not be restricted. However, a requirement would be established whereby NMFS must be consulted to determine whether future Federal non-fishing activities would adversely impact *Loligo* egg EFH. Also, potential adverse impacts of MSB fisheries on *Loligo* egg EFH would have to be evaluated in a future management action. A range of habitat protection measures exist that could be implemented if protection of *Loligo* egg EFH is determined to be necessary. The common feature of these measures is that they conserve or enhance EFH. This could be accomplished by preventing or mitigating non-fishing activities in EFH areas or by reducing fishing effort, or restricting the use of certain gear types or configurations in those areas. Habitat protection provided by these actions would also be extended to other species and ecosystem functions that utilize or are affected by *Loligo* egg EFH.

*Prohibition on Bottom Trawling to Reduce Gear Impacts on EFH by MSB Fisheries*

Amendment 9 considered reducing gear impacts on EFH by MSB fisheries in order to bring the FMP into compliance with the Magnuson-Stevens Act requirements. The FMP currently lacks adequate analysis of the effects of MSB fisheries on EFH for federally managed species within the geographic scope of the MSB fisheries. Such an analysis has been conducted as part of Amendment 9, and the results indicate that actions could be taken that would reduce impacts to EFH for federally managed species related to the activities of the MSB fisheries by prohibiting bottom trawling by MSB-permitted vessels. The proposed action is not intended to minimize adverse impacts to EFH for *Loligo*, *Illex*, mackerel, or butterfish, since EFH for the pelagic life stages of these species was determined to be not vulnerable to the effects of fishing.

This action proposes to prohibit bottom trawling in Lydonia and Oceanographer Canyons by MSB-permitted vessels. MSB-permitted vessels transiting these canyons would need to stow all bottom trawl gear. While Lydonia and Oceanographer Canyons are only minimally used by vessels with bottom trawl gear, this action will prevent future expansion of MSB fisheries into these canyons. This prohibition was determined to be practicable by the Council and is similar to regulations associated with the New England Fishery Management Council's Monkfish FMP (i.e., vessels on a monkfish day-at-sea are prohibited from entering these canyons). Even though this action does not prohibit bottom trawling by other federally permitted vessels in Lydonia and Oceanographer Canyons, this prohibition would benefit habitat in these canyons by deceasing localized damage from bottom trawling. Decreased fishery interactions with the managed stocks, non-target species, and protected and endangered species in Lydonia and Oceanographer Canyons are also expected, and this would correspond to localized benefits to these resources. The areas affected by the proposed measure represent 3 percent of the total EFH for juvenile tilefish, but not more than 2 percent for any other species.

Short-term costs to fishery participants are related to the size of the area where bottom trawling would be prohibited and how frequently those areas are utilized by fishery participants (see IRFA for complete economic analysis). The prohibition of bottom trawling by MSB-permitted vessels in Lydonia and Oceanographer Canyons is likely to have a minimal impact on revenues both for vessel owners and ports. Other restricted area alternatives considered by the Council would have provided greater habitat protection, but were not practicable because their potential economic impact would be higher.

Public comments are being solicited on Amendment 9 and its incorporated documents through the end of the comment period, May 27, 2008, stated in the NOA for Amendment 9 (73 FR 15716, March 25, 2008). Public comments on the proposed rule must be received by May 27, 2008, the end of the comment period specified in the NOA for Amendment 9, to be considered in the approval/disapproval decision on the amendment. All comments received by May 27, 2008, whether specifically directed to Amendment 9 or the proposed rule, will be considered in the approval/disapproval decision on Amendment 9. Comments received after that date will not be considered in the decision to approve or disapprove Amendment 9. To be considered, comments must be received by 5 pm, eastern standard time, on the last day of the comment period.

**Classification**

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, NMFS has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an FSEIS for Amendment 9; a notice of availability was published on March 28, 2008 (73 FR 16672). The FSEIS describes the impacts of the proposed Amendment 9 measures on the environment. The proposed measures that would allow for multi-year specifications and revised biological reference points for *Loligo* are largely administrative. However, they will provide for an expanded planning horizon for harvesting and processing activities and a fixed constant as a basis for the fishing target definition, respectively. The measure to designate EFH for *Loligo* eggs will not directly affect the environment, but it will allow future impacts to EFH for *Loligo* eggs to be identified and mitigated. Extending the moratorium on entry into the *Illex* fishery without a sunset provision and prohibiting bottom trawling by MSB-permitted vessels in Lydonia and Oceanographer Canyons will have short-term, negative economic impacts, but are expected to have long-term benefits on the biological and physical environment.

The IRFA for this action is summarized below, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for

this action are contained in the preamble of this rule. A summary of the IRFA follows:

*Description and Estimate of Number of Small Entities to Which the Rule Would Apply*

There are no large entities participating in this fishery, as none grossed more than 4 million dollars annually, therefore, there are no disproportionate economic impacts on small entities. The proposed measures in Amendment 9 would affect all MSB-permitted vessels; however, many of the proposed measures (e.g., multi-year specifications, revised biological reference points for *Loligo*, designation of EFH for *Loligo* eggs) are not expected to have direct economic impacts. Section 6.5 (Human Communities) in Amendment 9 describes the number of vessels, key ports, and revenue information for each of the MSB fisheries; therefore, that information is not repeated here.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

*Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives*

As described previously, several of the proposed measures in Amendment 9 are not anticipated to have direct economic effects on MSB fisheries. Implementing multi-year specifications and management measures for all four managed species has the potential to provide MSB fishery participants with an expanded planning horizon for harvesting and processing activities. Therefore, it may have positive economic effects for MSB fishery participants when compared to the non-selected alternative of no action (annual specifications and management measures for mackerel, *Illex*, and butterfish; multi-year specifications and management measures for *Loligo*). This could lead to better business plans and ultimately greater economic benefits. Amendment 9 contained two alternatives that would have provided for multi-year specifications and management measures; the proposed action allows for multi-year specifications for up to 3 years, subject to annual review, and a non-selected alternative would have provided for multi-year specifications for up to 5 years, subject to annual review. The 3-year alternative was selected as the proposed action because management based on 3-year stock projections, rather than 5-year stock projections, is likely more appropriate for MSB species, given their relatively brief life spans, but it is difficult to assign a dollar value to this effect.

The proposed revisions to biological reference points ($F_{Target}$ and $F_{Threshold}$) for *Loligo* are primiarily administrative and are not expected to have direct economic effects on fishery participants. Revising the reference points is consistent with Magnuson-Stevens Act requirements to use the best scientific information available, as compared to the non-selective alternative of no action (using status quo reference points for $F_{Target}$ and FThreshold), but the economic impacts of the proposed action are difficult to predict. The revised reference points are not expected to result in an immediate change in the *Loligo* quota; the annual quota has been set at 17,000 mt each year since 2001. Consumer demand for *Loligo* will affect *Loligo* prices, which, in turn, will result in economic impacts on *Loligo* harvesters, processors, and consumers that are currently unquantifiable. To those consumers for whom *Loligo* is a desirable food item, increased availability of the resource, if it occurs, would be expected to provide a beneficial effect. If, on the other hand, the *Loligo* stock size decreases such that harvest costs increase, then *Loligo* prices would be expected to increase. Because the revised biological reference points are considered more robust, with respect to stock sustainability, than the status quo reference points, it is expected that there would be some long-term economic benefits associated with the revised reference points as compared to benefits associated with the status quo reference points.

Additionally, the proposed measure of designating EFH for *Loligo* eggs is not anticipated to have any direct economic effects on MSB participants, when compared to the non-selected alternative of not designating EFH for *Loligo* eggs. Designating EFH for *Loligo* eggs does not result in an immediate action that would restrict fishing or non-fishing activities. However, a requirement would be established whereby consultation with NMFS would be required for future Federal fishing and non-fishing activities that may adversely affect *Loligo* egg EFH. The proposed meaure has the potential to indirectly impact human communities if, at some point in the future, management actions are implemented in order to reduce fishing effort or decrease non-fishing impacts in those EFH areas. Because the specifics of any future actions are speculative at this point, it is unclear what the nature of the impacts on human communities, if any, would be. In the long term, however, protection of habitat needed by *Loligo* eggs is expected to improve the sustainability of the *Loligo* resource, and other managed resources that share those habitats, indirectly benefitting human communities dependent on those resources. An analysis of the likely impacts of specific future actions would be required prior to their implementation.

Amendment 9 contains two proposed measures that may have economic effects on MSB fisheries. The first of these proposed measures is extending the moratorium on entry into the *Illex* fishery, without a sunset provision. Because the present fleet is capable of harvesting in excess of the recent *Illex* quota of 24,000 mt, there is a clear need for a moratorium on entry into the fishery. International market reports suggesting that the world supplies of squid will be tight for several years and, therefore, prices are expected to be high, coupled with the fact that resource productivity is low to moderate, supports making the moratorium permanent. Unfortunately, the benefits and costs of the moratorium options cannot be easily analyzed. The available information suggests that, if the moratorium were terminated (a non-selected alternative) or were allowed to expire in 2009 (a non-selected alternative), and economic and resource conditions remain relatively unchanged from recent levels, there would not be any substantial increase in landings of *Illex* relative to the landings likely to occur, with or without a moratorium. If, however, economic conditions changed to promote increased activity on *Illex* as occurred in 2004, landings of *Illex* would increase. Moratorium alternatives offer protection against risk of an expanding fishery and risk of further depressing the resource. These options, however, do not appear to generate landings, revenue, or potential benefit streams any different that those levels most likely to occur with a removal of the moratorium (given current conditions). Moratorium alternatives (without a sunset provision (proposed action) or without a sunset provision, but allowing new entry through permit transfer (a non-selected alternative)) would impose some short-term costs in that they constrain expansion of the fishery, either until 2009 or permanently. That is, individuals desiring to enter the fishery would be

denied the potential revenues that might be realized if they could land more *Illex*, unless they purchased an *Illex* permitted vessel (proposed action) or an existing *Illex* permit (non-selected alternative). Failure to extend the moratorium could result in further overcapitalization of this sector of the fishing industry, which in turn could have negative economic consequences for the vessels and communities that depend upon the *Illex* resource. Extension of the *Illex* moratorium program would provide positive benefits to the communities that are dependent on the commercial *Illex* fishery. The primary ports and surrounding communities where *Illex* are landed would be the most affected by this action (see Section 6.5.1 of Amendment 9 for information on primary ports).

The second proposed measure in Amendment 9 that may have economic effects on MSB fisheries is prohibiting bottom trawling in Lydonia and Oceanographer Canyons by MSB-permitted vessels. The proposed action and non-selected alternatives prohibiting bottom trawling (either at the head of Hudson Canyon or in the tilefish habitat area of particular concern (HAPC)) would benefit habitat in the closed areas by decreasing localized damage from bottom trawling by MSB-permitted vessels as compared to the no action, non-selected alternative (no new areas closed to bottom trawling by MSB-permitted vessels). Decreased fishery interactions with the managed stocks, non-target species, and protected and endangered species are also expected to be associated with action alternatives, and this would correspond to localized benefits to these resources.

Short-term costs to fishery participants are related to the size of the closure area. Analyses of ex-vessel revenues from MSB-permitted bottom trawl vessels were conducted for 2001–2004. The results indicated that closing tilefish HAPC (non-selected alternative) to bottom otter trawling during that period would have reduced annual revenue from bottom otter trawling by 10 percent or more for about 162 MSB-permitted vessels. With regard to port impacts, ex-vessel revenues from MSB-permitted bottom trawling in the tilefish HAPC area represented large percentages of total revenues (30 - 50 percent) from Point Judith, RI; Point Pleasant, NJ; Montauk, NY; Point Lookout, NY; and Hampton Bays, NY. Closing the Head of Hudson Canyon (non-selected alternative) to bottom otter trawling in 2001–2004 would have reduced ex-vessel revenues by 10 percent or more for about 64 MSB-permitted bottom trawl vessels. Ports that would experience the greatest percentage of revenue loss consist of Belford, NJ (13.9 percent); Elizabeth, NJ (16.5 percent); Point Pleasant, NJ (33.6 percent); and Point Lookout, NY (46.6 percent). Geographical analysis of fishing effort reveals minimal use of bottom trawl gear in Lydonia and Oceanographer Canyons; therefore, the closure of Lydonia and Oceanographer Canyons (proposed action) would likely have minimal impacts on revenues both for vessel owners and ports.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 28, 2008.

**James W. Balsiger,**

*Acting Assistant Administrator For Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.4, paragraph (a)(5)(i) is revised to read as follows:

### § 648.4 Vessel permits.

* * * * *

(a) * * *

(5) * * *

(i) *Loligo* squid/butterfish and *Illex* squid moratorium permits.

* * * * *

3. In § 648.14, paragraph (p)(12) is added to read as follows:

### § 648.14 Prohibitions.

* * * * *

(p) * * *

(12) Enter or be in the areas described at § 648.23(a)(5).

* * * * *

4. In § 648.20, paragraph (b) is revised to read as follows:

### § 648.20 Maximum optimum yield.

* * * * *

(b) *Loligo* - the catch associated with a fishing mortality rate of $F_{Threshold}$.

* * * * *

5. In § 648.21, paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) are revised to read as follows:

### § 648.21 Procedures for determining initial annual amounts.

* * * * *

(a)* * *

(1) Initial OY (IOY), including research quota (RQ), domestic annual harvest (DAH), and domestic annual processing (DAP) for *Illex* squid, which, subject to annual review, may be specified for a period of up to 3 years;

(2) IOY, including RQ, DAH, DAP, and bycatch level of the total allowable level of foreign fishing (TALFF), if any, for butterfish, which, subject to annual review, may be specified for a period of up to 3 years;

(3) IOY, including RQ, DAH, DAP, joint venture processing (JVP), if any, and TALFF, if any, for mackerel, which, subject to annual review, may be specified for a period of up to 3 years. The Monitoring Committee may also recommend that certain ratios of TALFF, if any, for mackerel to purchases of domestic harvested fish and/or domestic processed fish be established in relation to the initial annual amounts.

(4) Initial OY (IOY), including research quota (RQ), domestic annual harvest (DAH), and domestic annual processing (DAP) for *Loligo* squid, which, subject to annual review, may be specified for a period of up to 3 years; and

* * * * *

6. In § 648.23, paragraph (a)(5) is added to read as follows:

### § 648.23 Gear restrictions.

(a) * * *

(5) *Mackerel, squid, and butterfish bottom trawling restricted areas*–(i) *Oceanographer Canyon*. No permitted mackerel, squid, or butterfish vessel may fish with bottom trawl gear in the Oceanographer Canyon or be in the Oceanographer Canyon unless transiting. Vessels may transit this area provided the bottom trawl gear is stowed in accordance with the provisions of paragraph (b) of this section. Oceanographer Canyon is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

OCEANOGRAPHER CANYON

| Point | N. Lat. | W. Long. |
|---|---|---|
| OC1 | 40°10.0′ | 68°12.0′ |
| OC2 | 40°24.0′ | 68°09.0′ |
| OC3 | 40°24.0′ | 68°08.0′ |
| OC4 | 40°10.0′ | 67°59.0′ |
| OC1 | 40°10.0′ | 68°12.0′ |

(ii) *Lydonia Canyon*. No permitted mackerel, squid, or butterfish vessel may fish with bottom trawl gear in the Lydonia Canyon or be in the Lydonia Canyon unless transiting. Vessels may transit this area provided the bottom trawl gear is stowed in accordance with the provisions of paragraph (b) of this

section. Lydonia Canyon is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

LYDONIA CANYON

| Point | N. Lat. | W. Long. |
|---|---|---|
| LC1 | 40°16.0′ | 67°34.0′ |
| LC2 | 40°16.0′ | 67°42.0′ |
| LC3 | 40°20.0′ | 67°43.0′ |
| LC4 | 40°27.0′ | 67°40.0′ |
| LC5 | 40°27.0′ | 67°38.0′ |

LYDONIA CANYON—Continued

| Point | N. Lat. | W. Long. |
|---|---|---|
| LC1 | 40°16.0′ | 67°34.0′ |

* * * * *

[FR Doc. E8–7025 Filed 4–3–08; 8:45 am]

BILLING CODE 3510–22–S

# Notices

Federal Register

Vol. 73, No. 66

Friday, April 4, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Public Meeting on Proposed Partner Vetting System

**AGENCY:** U.S. Agency for International Development.

**ACTION:** Notice of meeting.

**SUMMARY:** USAID will host a meeting for interested parties regarding the proposed Partner Vetting System. Following our System of Records Notice: July 17–August 27, 2007; Rulemaking Notice: July 20–Sept. 18, 2007; Paperwork Reduction Act Notices: July 23–Dec. 3, 2007; and Congressional consultations, USAID is interested in gathering feedback prior to the issuance of a final rule and initial implementation of the system. The goal of this meeting is to answer concerns raised during the public comment periods on this subject and to touch upon the results of our consultations thus far.

**DATES:** This meeting will be held on Friday, April 11, 2008 at 11:30 a.m.

**ADDRESSES:** The meeting will be held at U.S. Agency for International Development, 1300 Pennsylvania Avenue, NW., Washington, DC. Photo ID required for admittance into the Ronald Reagan Building as well as USAID.

**Note:** Due to security RSVP required.

**FOR FURTHER INFORMATION CONTACT:** RSVP to Todd Calongne, 202–712–0059, *tcalongne@usaid.gov.*

Dated: March 31, 2008.

**Jeffrey Grieco,**

*Assistant Administrator for Legislative and Public Affairs.*

[FR Doc. E8–6987 Filed 4–3–08; 8:45 am]

BILLING CODE 6116–01–P

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002; Notice

On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' which is now known as the No FEAR Act. One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' Public Law 107–174, Summary. In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' Public Law 107–174, Title I, General Provisions, section 101(1).

The Act also requires this agency to provide this notice to Federal employees, former Federal employees and applicants for Federal employment to inform you of the rights and protections available to you under Federal antidiscrimination and whistleblower protection laws.

**Antidiscrimination Laws**

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e-16.

This agency also prohibits discrimination based on sexual orientation. The right to address sexual orientation discrimination derives from Executive Order 13087.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin, disability, parental status or sexual orientation you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with the Agency. *See, e.g.*, 29 CFR 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through the Agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

**Whistleblower Protection Laws**

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site *http://www.osc.gov.*

**Retaliation for Engaging in Protected Activity**

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected

activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

**Disciplinary Actions**

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

**Additional Information**

For further information regarding the No FEAR Act regulations, refer to 5 CFR 724. You may also contact the USAID Office of Equal Opportunity Programs (EOP). Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site *http://www.eeoc.gov* and the OSC Web site *http://www.osc.gov.*

**Existing Rights Unchanged**

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

**FOR FURTHER INFORMATION CONTACT:** Lisa M. Lawler by telephone at (202) 712–0111; by FAX at (202) 216–3370; or by e-mail at *llawler@usaid.gov.*

Dated: March 28, 2008.

**Jessalyn L. Pendarvis,**

*Director, Office of Equal Opportunity Programs.*

[FR Doc. E8–6990 Filed 4–3–08; 8:45 am]

**BILLING CODE 6116–01–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Doc. No. AMS–TM–08–0021; TM–08–04]**

### Notice of Meeting of the National Organic Standards Board

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) is announcing a forthcoming meeting of the National Organic Standards Board (NOSB).

**DATES:** The meeting dates are Tuesday, May 20, 2008, 11 a.m. to 5 p.m.; Wednesday, May 21, 2008, 8 a.m. to 5 p.m.; and Thursday, May 22, 2008, 8 a.m. to 5 p.m. Requests from individuals and organizations wishing to make oral presentations at the meeting are due by the close of business on May 5, 2008.

**ADDRESSES:** The meeting will take place at The Holiday Inn Inner Harbor Hotel, 301 W. Lombard Street, Baltimore, MD 21201.

- Requests for copies of the NOSB meeting agenda, may be sent to Ms. Valerie Frances, Executive Director, NOSB, USDA–AMS–TMP–NOP, 1400 Independence Ave., SW., Room 4008–So., Ag Stop 0268, Washington, DC 20250–0268. The NOSB meeting agenda and proposed recommendations may also be viewed at *http://www.ams.usda.gov/nop*.
- Comments on proposed NOSB recommendations may be submitted by May 5, 2008 in writing to Ms. Frances at either the postal address above or via the internet at *http://www.regulations.gov* only. The comments should identify Docket No. AMS–TM–08–0021. It is our intention to have all comments to this notice whether they are submitted by mail or the internet available for viewing on the *http://www.regulations.gov* Web site.
- Requests to make an oral presentation at the meeting may also be sent by May 5, 2008 to Ms. Valerie Frances at the postal address above, by email at *valerie.frances@usda.gov*, via facsimile at (202) 205–7808, or phone at (202) 720–3252.

**FOR FURTHER INFORMATION CONTACT:** Valerie Frances, Executive Director, NOSB, National Organic Program (NOP), (202) 720–3252, or visit the NOP Web site at: *http://www.ams.usda.gov/nop*.

**SUPPLEMENTARY INFORMATION:** Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*) requires the establishment of the NOSB. The purpose of the NOSB is to make recommendations about whether a substance should be allowed or prohibited in organic production or handling, to assist in the development of standards for substances to be used in organic production, and to advise the Secretary on other aspects of the implementation of the OFPA. The NOSB met for the first time in Washington, DC, in March 1992, and currently has six subcommittees working on various aspects of the organic program. The committees are: Compliance, Accreditation, and Certification; Crops; Handling; Livestock; Materials; and Policy Development.

In August of 1994, the NOSB provided its initial recommendations for the NOP to the Secretary of Agriculture. Since that time, the NOSB has submitted 154 addenda to its recommendations and reviewed more than 327 substances for inclusion on the National List of Allowed and Prohibited Substances. The Department of Agriculture (USDA) published its final National Organic Program regulation in the **Federal Register** on December 21, 2000, (65 FR 80548). The rule became effective April 21, 2001.

In addition, the OFPA authorizes the National List of Allowed and Prohibited Substances and provides that no allowed or prohibited substance would remain on the National List for a period exceeding 5 years unless the exemption or prohibition is reviewed and recommended for renewal by the NOSB and adopted by the Secretary of Agriculture. This expiration is commonly referred to as sunset of the National List. The National List appears at 7 CFR Part 205, Subpart G.

The principal purposes of the NOSB meeting are to provide an opportunity for the NOSB to receive an update from the USDA/NOP and hear progress reports from NOSB committees regarding work plan items and proposed action items. The last meeting of the NOSB was held on November 28–30, 2007 in Arlington, VA.

At its last meeting, the Board recommended the addition of 3 materials to the National List § 205.601 for use in crops and § 205.605 for use in handling. In addition, the Board also nearly completed the sunset review process for 11 of the 13 materials for use in crops and handling which are due to expire on November 3, 2008 and November 4, 2008. Of these 11 materials, there are 9 substances for use in crops and handling placed on the National List on November 3, 2003, and

are scheduled to expire on November 3, 2008. Four substances for use in handling were placed on the National List on November 4, 2003, and are scheduled to expire on November 4, 2008. They will be making final recommendations on these 11 materials at this meeting. Two forms of Tartaric acid, for use in handling in § 205.605(a) and (b) for which the Board has not completed its review, were placed on the National List on November 3, 2003, and are scheduled to expire on November 3, 2008. The sunset review process for these two forms of Tartaric acid must be concluded no later than November 3, 2008. If renewal is not concluded by this date, the use or prohibition of these 2 forms of Tartaric acid will no longer be in compliance with the National Organic Program.

The Policy Development Committee will present recommendations regarding revisions to the NOSB Policy and Procedures Manual and the Guide for new NOSB members as well as discuss their on-going collaboration with the NOP to review the NOP responses to prior NOSB recommendations.

The Compliance, Accreditation, and Certification Committee and the Crops Committee will jointly present their recommendation offering guidance for accredited certifying agents regarding annual commercial availability determinations for organic seed sourcing by farmers under § 205.204.

The Crops Committee will present recommendations on the materials Tetracycline, Cheesewax, Dextrin, and Sorbitol octanoate petitioned for use on § 205.601. The Committee will also present their recommendations on the continued use or prohibition of Copper sulfate, Ozone gas, Peracetic acid, and EPA List 3—Inerts of unknown toxicity, with their respective annotations and limitations. These exemptions are due to expire on November 3, 2008, from § 205.601. The Committee will also present their recommendation on the continued use or prohibition of Calcium chloride for use as a brine-sourced foliar spray. Calcium chloride is otherwise considered a prohibited natural substance in § 205.602 and is also due to expire on November 3, 2008.

The Crops Committee and the Livestock Committee will jointly present their recommendation on the development of standards for organic aquatic plants in organic aquaculture.

The Livestock Committee will present its recommendation on the material Fenbendazole petitioned for use in § 205.603. The Committee will present its recommendations on the petition to remove the expiration date of October 21, 2008 on the following three substances: DL–Methionine, DL–Methionine–Hydroxy Analog; and DL–Methionine–Hydroxy Analog Calcium—for use only in organic poultry production in § 205.603. The Committee will also present recommendations on the use of fish feed and open net pens in regards to the development of organic aquaculture standards for finfish.

The Handling Committee will present their recommendations on the materials Sodium chlorite, acidified and Calcium, derived from seaweed petitioned for inclusion in § 205.605 for use in organic products. The Committee will present their recommendations on the 24 materials Black Pepper, Buck Hull Powder, Camu Camu Extract, Caramel Color, Chinese Thistle Daisy Extract, Chlorella algae, Codonopsis Root Extract, Dumontiacae algae, Ginger Root Extract, Jujube Fruit Extract, Kombu seaweed, Ligusticum Root Extract, Marsala Cooking Wine, Oatbran, Okra, Pectin, low methoxy, non-amidated, Peony Root Extract, Polygala Root Extract, Polygonum Root Extract, Poria Fungus Extract, Rehmannia Extract, Sherry Cooking Wine, Tangerine Peel Extract, and Tragacanth Gum petitioned for inclusion in § 205.606 for use in organic products depending on final commercial availability determinations performed by accredited certifying agents.

The Handling Committee will present their recommendations on the continued use or prohibition of the material exemptions in § 205.605(a) which is Agar-agar and due to expire on November 3, 2008, and Animal enzymes, Calcium sulfate, and Glucono delta-lactone, with their respective annotations and limitations, due to expire on November 4, 2008. The Committee will also present their recommendations on the continued use or prohibition of the material exemption in § 205.605(b) which is Cellulose with its respective annotations and limitations, due to expire on November 4, 2008. They will also present their recommendations on the continued use or prohibition of the material exemptions for the two forms of Tartaric acid in § 205.605(a) and (b) which are due to expire on November 3, 2008.

*The Meeting is Open to the Public.* The NOSB has scheduled time for public input for Tuesday, May 20, 2008, from 1 p.m. to 5 p.m., Wednesday, May 21, 2008, from 3:45 p.m. to 5 p.m., and Thursday, May 22, 2008, from 8 a.m. to 9:30 a.m. Individuals and organizations wishing to make oral presentations at the meeting may forward their requests by mail, facsimile, email, or phone to Valerie Frances as listed in **ADDRESSES** above. Individuals or organizations will be given approximately 5 minutes to present their views. All persons making oral presentations are requested to provide their comments in writing. Written submissions may contain information other than that presented at the oral presentation. Anyone may submit written comments at the meeting. Persons submitting written comments are asked to provide 30 copies.

Interested persons may visit the NOSB portion of the NOP Web site at *http://www.ams.usda.gov/nop* to view available meeting documents prior to the meeting, or visit *http://www.regulations.gov* to submit and view comments as provided for in **ADDRESSES** above. Documents presented at the meeting will be posted for review on the NOP Web site approximately 6 weeks following the meeting.

Dated: April 1, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 08–1097 Filed 4–1–08; 4:21pm]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### National Agricultural Library; Notice of Intent To Seek Approval To Collect Information

**AGENCY:** USDA, Agricultural Research Service, National Agricultural Library.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Library's intent to request renewal for information collection relating to existing nutrition education materials (*i.e.* recipes and cookbooks) targeting low-income and Food Stamp Program-eligible persons. This voluntary form gives Food Stamp Nutrition Education (FSNE) providers the opportunity to share resources that they have developed or used.

**DATES:** Comments on this notice must be received by 65 days after date of publication in the **Federal Register** to be assured of consideration.

**ADDRESSES:** Address all comments concerning this notice to Gina Hundley Gomez, Technical Information Specialist, Food and Nutrition Information Center, National Agricultural Library, 10301 Baltimore Avenue, Beltsville, MD 20705–2351,

telephone (301) 504–5368 or fax (301) 504–6409.

Submit electronic comments to *ghundley@nal.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Food Stamp Nutrition Connection Recipe Submission and Review Form.

*OMB Number:* 0518–0043.

*Expiration Date:* Three years from date of approval.

*Type of Request:* Existing data collection from Food Stamp nutrition education providers.

*Abstract:* The National Agricultural Library's Food Stamp Nutrition Connection (FSNC) *http://foodstamp.nal.usda.gov* resource system developed and maintains an on-line recipe database, the Recipe Finder, as a popular feature to the FSNC Web site. The purpose of the Recipe Finder database is to provide FSNE providers with low-cost, easy to prepare, healthy recipes for classes and demonstrations with FSNE participants. FSNC staff rely on these same educators to submit their best recipes for review, analysis and inclusion in the database. FSNC staff and FSNE providers alike benefit from the collecting and posting of feedback on the individual recipes based on educator experiences. Data collected using the voluntary Submission Form will help identify a person's eligibility to submit materials for this database. The Recipe Finder Submission Form allows FSNE providers to submit recipes on-line, saving time and money by eliminating the need to photocopy and mail or fax recipes. Data collected from the Recipe Review form will help educators share their successes or identify opportunities for added value when incorporating these recipes into their FSNE efforts.

This online submission form will continue to serve as an efficient vehicle which allows FSNC staff to communicate with FSNE providers and inform other interested parties of healthy recipes that are appropriate for low-income Americans.

**Estimate of Burden for Recipe Submission Form**

Public reporting burden for this collection of information is estimated to average 7.5 minutes per response.

*Respondents:* Food Stamp nutrition education providers.

*Estimated Number of Respondents:* 100 per year.

*Estimated Total Annual Burden on Respondents:* 12.5 hrs.

**Estimate of Burden for Recipe Review Form**

Public reporting burden for this collection of information is estimated to average 7 minutes per response.

*Respondents:* Food Stamp nutrition education providers.

*Estimated Number of Respondents:* 150 per year.

*Estimated Total Annual Burden on Respondents:* 17.5 hrs.

**Comments**

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance for the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: March 12, 2008.

**Antoinette Betschart,**

*Associate Administrator, ARS.*

[FR Doc. E8–7048 Filed 4–3–08; 8:45 am]

BILLING CODE 3410–03–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Bend/Ft. Rock Ranger District; Deschutes National Forest; Oregon; Dead Log Vegetation Management Project EIS

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The USDA, Forest Service, will prepare an environmental impact statement (EIS) on a proposed action to address forest health and hazardous fuels concerns within the 16,000-acre planning area known as the Deadlog Vegetation Project. The planning area is located about 36 miles southeast of Bend, Oregon; it is located in Township 22S, Range 15E, and Township 23S, Ranges 14E and 15E. The alternatives will include the proposed action, no action, and additional alternatives that respond to issues generated through the scoping process. The agency will give notice of the full environmental analysis and decision-making process so interested and affected people may participate and contribute to the final decision.

**DATES:** Comments concerning the scope of the analysis must be received by 30 days following the date that this notice appears in the **Federal Register**.

**ADDRESSES:** Send written comments to Phil Cruz, District Ranger, Bend/Ft. Rock Ranger District, 1230 NE 3rd St., Suite A–262, Bend, OR 97701.

**FOR FURTHER INFORMATION CONTACT:** Mark Macfarlane, Environmental Planner, Bend/Ft. Rock Ranger District, 1230 NE 3rd St., Suite A–262, Bend, Oregon, 97701, phone (541) 383–4044. E-mail *mmacfarlane@fs.fed.us.*

*Responsible Official.* The responsible official will be John Allen, Forest Supervisor, Deschutes National Forest, P.O. Box 1645 Hwy 20 East, Bend, OR 97701.

**SUPPLEMENTARY INFORMATION:**

*Purpose and Need.* Many forest stands in the project area are sustaining a higher density of understory trees than they would have historically and are susceptible to bark beetle mortality. Large diameter trees are unable to compete with the younger, more vigorous trees for available resources. Also, understory trees and brush combined with a high degree of buildup of natural fuels on the forest floor are contributing to the risk of uncharacteristically severe fire behavior, should a wildfire start in the planning area. The purpose of the project is to:

- Manage stands of late old structure ponderosa pine to promote sustainability over the long term;
- In dense stands dominated by ponderosa pine, return stands toward historic conditions addressing tree species composition, stocking levels and resistance to insects, disease and fire mortality;
- Reduce surface fuels throughout the planning area to levels that will not sustain stand replacement fires; manage lodgepole pine stands to reduce the acres susceptible to bark beetle mortality;
- And reduce potential for the spread of ponderosa pine dwarf mistletoe.

*Proposed Action.* The proposed actions are intended to sustain, enhance, and protect long-term productivity and resiliency of the forest ecosystem, and maintain and enhance wildlife habitat. Proposed actions include selection harvest, commercial thinning, small tree thinning and ladder

fuels reduction, activity fuels treatments, and mowing and prescribed underburning to treat natural fuels.

*Issues*. The following is a list of concerns or issues related to the proposed action that the interdisciplinary team has identified. Other issues may arise from public input. Where issues cannot be resolved through project design or mitigation, they may be the basis for developing alternatives to the Proposed Action.

• *Deer Hiding Cover:* In some parts of the Deadlog planning area, deer hiding cover is currently below Forest Plan standards. A Forest Plan Amendment will be necessary if proposed treatments reduce the level cover further.

• *Open Road Density:* The amount of roads in the planning area exceeds the target road density identified in the Forest Plan for deer summer range. Roads may be identified for closure or decommissioning.

• *Heritage Resources:* There are prehistoric and historic heritage resources within the planning area, that could be affected by either wildfire or the proposed active management of the fuels.

*Comment*. Public comments about this proposal are requested in order to assist in identifying issues, determine how to best manage the resources, and to focus the analysis. Comments received to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action 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 parts 215 and 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

A draft EIS will be filed with the Environmental Protection Agency (EPA) and available for public review by October 2008. The EPA will publish a Notice of Availability (NOA) of the draft ETS in the **Federal Register**. The final ETS is scheduled to be available January 2009.

The comment period on the draft ETS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

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 a 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 ETS stage but that are not raised until after completion of the final ETS may be waived or dismissed by the courts [*City of Angoon* 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 ETS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft ETS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft ElS of the merits of the alternatives formulated and discussed in the statement. 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.

In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. The Forest Service is the lead agency and the responsible official is the Forest Supervisor, Deschutes National Forest. The responsible official will decide where, and whether or not to thin stands, and apply natural fuels treatments. The responsible official will also decide how to mitigate impacts of these actions and will determine when and how monitoring of effects will take place.

The Deadlog Vegetation Project decision and the reasons for the decision will be documented in the record of decision. That decision will be subject to Forest Service Appeal Regulations (35 CFR Part 215).

**Rolando Mendez,**

*Bend/Ft. Rock Deputy District Ranger.*

[FR Doc. E8–6899 Filed 4–3–08; 8:45 am]

**BILLING CODE 3410–11–M**

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of New Fee Site; Federal Lands Recreation Enhancement Act (Title VII, Pub. L. 108–447)

**AGENCY:** Ochoco National Forest, USDA Forest Service.

**ACTION:** Notice of New Fee Site.

**SUMMARY:** The Ochoco National Forest is planning to charge a $90 fee for the rental of the Ochoco Ranger Station (Ranger's House). This site has been reconditioned and furnishings added for recreation use. Funds from the fee site will be used for the continued operation and maintenance of the Ranger's House.

**DATES:** Ranger's House will become a fee site for recreation camping January, 2009.

**ADDRESSES:** Forest Supervisor, Ochoco National Forest, 3160 NE 3 St, Prineville, OR 97754.

**FOR FURTHER INFORMATION CONTACT:** Cathy Lund, Recreation Staff, 541–416–6451.

**SUPPLEMENTARY INFORMATION:** The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established. This new fee will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

The Ochoco National Forest currently has one other recreational rental on the Lookout Mt. Ranger District. This rental is occupied at 90% throughout the open season. A business analysis of this type of rental has shown that people desire having this sort of recreation experience on the Ochoco National Forest. A market analysis indicates that the $90 per night fee is both reasonable and acceptable for this rental.

People wanting to rent the Ranger's House would need to do so through the National Recreation Reservation Service, at *http://www.reserveusa.com.*

Dated: March 25, 2008.

**Jeff Walter,**

*Ochoco National Forest Supervisor.*

[FR Doc. E8–6900 Filed 4–3–08; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of New Fee Site; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447)

**AGENCY:** Ochoco National Forest, USDA Forest Service.

**ACTION:** Notice of New Fee Site.

**SUMMARY:** The Ochoco National Forest is planning to charge an $8 fee for family overnight campsites at Skull Hollow Campground with additional vehicle/vehicles being $4.00. These sites have been available for non-fee recreation use prior to this date. Camping in other campgrounds on the Ochoco National Forest has shown that people appreciate and enjoy the availability of campgrounds. Funds from the fee site will be used for the continued operation and maintenance of Skull Hollow.

**DATES:** Skull Hollow will become a fee site for recreation camping October, 2008.

**ADDRESSES:** Forest Supervisor, Ochoco National Forest, 3160 3rd St, Prineville, OR 97754.

**FOR FURTHER INFORMATION CONTACT:** Cathy Lund, Recreation Staff, 541–416–6451.

**SUPPLEMENTARY INFORMATION:** The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. This new fee will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

The Ochoco National Forest currently has two other campgrounds on the Crooked River National Grassland District. These campgrounds are often occupied throughout their open season. A business analysis of Skull Hollow has shown that people desire having this sort of recreation experience on the Ochoco National Forest. A market analysis indicates that the $8/per night fee and $4.00 additional vehicle is both reasonable and acceptable for this sort of campground.

People wanting to camp at Skull Hollow will need to do so through a first come first serve. This campground is not on the National Recreation Reservation Service, at *http://www.reserveusa.com.*

Dated: March 25, 2008.

**Jeff Walter,**

*Ochoco National Forest Supervisor.*

[FR Doc. E8–6902 Filed 4–3–08; 8:45 am]

BILLING CODE 3410–11–M

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed Additions to and Deletions from the Procurement List.

**SUMMARY:** The Committee is proposing to add to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a product and a service previously furnished by such agencies.

*Comments Must Be Received On or Before:* May 4, 2008.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT:** Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

### Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the product and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

*Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

*End of Certification*

The following product and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

**Product**

Spices, UGR–A
- NSN: 8950–01–E10–1788—Spice Blend, Barbecue Style
- NSN: 8950–01–E10–1789—Spice Blend, Cinnamon Maple Sprinkles
- NSN: 8950–01–E10–1790—Spice Blend, Italian Style
- NSN: 8950–01–E10–1791—Spice, Onion, Minced, Dehydrated
- NSN: 8950–01–E10–1792—Spice, Paprika, Ground
- NSN: 8950–01–E10–1793—Spice Blend, Poultry Seasoning
- NSN: 8950–01–E10–1794—Spice Blend, Steak Seasoning
- NSN: 8950–01–E10–1795—Spice Blend, Vegetable Seasoning, w/o Salt
- NSN: 8950–01–E10–1796—Spice, Pepper, Black, Ground
- NSN: 8950–01–E10–1797—Salt, Table, Iodized

*NPA:* Continuing Developmental Services, Inc., Fairport, NY

*Coverage:* C-List for the requirements of the Defense Supply Center Philadelphia, Philadelphia, PA

*Contracting Activity:* Defense Supply Center Philadelphia, Philadelphia, PA

**Services**

*Service Type/Location:* TSCA Assistance Information Service, 422 South Clinton Avenue, Rochester, NY

*NPA:* Association for the Blind and Visually Impaired—Goodwill Industries of Greater Rochester, Rochester, NY

*Contracting Activity:* Environmental Protection Agency, Washington, DC

*Service Type/Location:* Custodial Services, General Services Administration, Public Buildings Service, 1500 East Bannister Road, Buildings 2306 and 2312, Kansas City, MO

*NPA:* Independence and Blue Springs Industries, Inc., Independence, MO

*Contracting Activity:* General Services Administration, Public Buildings Services, Region 6, Kansas City, MO

**Deletions**

*Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action should not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the product and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and service proposed for deletion from the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

*End of Certification*

The following product and service are proposed for deletion from the Procurement List:

**Product**

Pad, Fax Transmittal (OF 99)
*NSN:* 7540–01–317–7368
*NPA:* Association for the Blind and Visually Impaired—Goodwill Industries of Greater Rochester, Rochester, NY
*Contracting Activity:* Government Printing Office, Washington, DC

**Service**

*Service Type/Location:* Food Service, 105th Airlift Wing, Newburgh, NY
*NPA:* New Dynamics Corporation, Middletown, NY
*Contracting Activity:* 105th Airlift Wing/LGC, Newburgh, NY

**Kimberly M. Zeich,**

*Director, Program Operations.*

[FR Doc. E8–7064 Filed 4–3–08; 8:45 am]

**BILLING CODE 6353–01–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions and Deletion

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and Deletion from the Procurement List.

**SUMMARY:** This action adds to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a product previously furnished by such agencies.

**DATES:** May 4, 2008.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

**SUPPLEMENTARY INFORMATION:**

### Additions

On January 25 and February 8, 2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 FR 4519; 7521) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and services and impact of the additions on the current or most recent contractors, the Committee has determined that the product and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. The action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

### End of Certification

Accordingly, the following product and services are added to the Procurement List:

**Product**

Paper, Xerographic (Chlorine Free)
*NSN:* 7530–01–503–8441—8½″ x 11″
*NPA:* Louisiana Association for the Blind, Shreveport, LA
*Coverage:* The remaining General Services Administration (Burlington, NJ depot) requirement. A-List for the total Government requirements as specified by the General Services Administration
*Contracting Activity:* General Services Administration, Office Supplies & Paper Products Acquisition Ctr, New York, NY

**Services**

*Service Type/Location:* Custodial Services, Air National Guard, 1401 Robert B. Miller, Jr. Drive, Garden City, GA
*NPA:* Trace, Inc., Boise, ID
*Contracting Activity:* Air National Guard, 165th Air Wing, Garden City, GA

*Service Type/Location:* Laundry Services, Air National Guard-Sioux City, 185th Air Refueling Wing, 2920 Headquarters Avenue, Sioux City, IA
*NPA:* Genesis Development, Jefferson, IA
*Contracting Activity:* Iowa Air National Guard, Sioux City, IA

### Deletion

On February 8, 2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 FR 7521) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the product listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action should not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product deleted from the Procurement List.

### End of Certification

Accordingly, the following product is deleted from the Procurement List:

**Product**

Wrapper, Sterilization
*NSN:* 6530–00–197–9223
*NSN:* 6530–00–926–4902
*NSN:* 6530–00–926–4903
*NSN:* 6530–00–926–4904
*NSN:* 6530–00–926–4905
*NSN:* 6530–00–197–9283
*NPA:* Alabama Industries for the Blind, Talladega, AL
*NPA:* Blind Industries & Services of Maryland, Baltimore, MD

*NPA:* Mississippi Industries for the Blind, Jackson, MS
*NSN:* 6530–00–197–9228
*NPA:* Alabama Industries for the Blind, Talladega, AL
*NPA:* Arizona Industries for the Blind, Phoenix, AZ
*NPA:* Blind Industries & Services of Maryland, Baltimore, MD
*NPA:* Mississippi Industries for the Blind, Jackson, MS
*Contracting Activity:* Veterans Affairs National Acquisition Center, Hines, IL
*NSN:* 6530–01–036–0398
*NPA:* UNKNOWN
*NSN:* 6530–01–244–2776
*NSN:* 6530–01–244–9946
*NSN:* 6530–01–246–0156
*NSN:* 6530–01–246–1935
*NSN:* 6530–01–248–4813
*NPA:* Alabama Industries for the Blind, Talladega, AL
*NPA:* Arizona Industries for the Blind, Phoenix, AZ
*NPA:* Blind Industries & Services of Maryland, Baltimore, MD
*NPA:* Mississippi Industries for the Blind, Jackson, MS
*Contracting Activity:* Defense Supply Center Philadelphia, Philadelphia, PA
*NSN:* 6530–00–299–9603
*NPA:* Alabama Industries for the Blind, Talladega, AL
*NPA:* Arizona Industries for the Blind, Phoenix, AZ
*NPA:* Blind Industries & Services of Maryland, Baltimore, MD
*NPA:* Mississippi Industries for the Blind, Jackson, MS
*Contracting Activity:* Defense Supply Center Philadelphia, Philadelphia, PA
*Contracting Activity:* Veterans Affairs National Acquisition Center, Hines, IL

**Kimberly M. Zeich,**

*Director, Program Operations.*

[FR Doc. E8–7065 Filed 4–3–08; 8:45 am]

**BILLING CODE 6353–01–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**A–570–894**

### Certain Tissue Paper Products from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (''the Department'') is currently conducting the 2006 2007 administrative review of the antidumping duty order on certain tissue paper products from the People's Republic of China (''PRC''). The period of review (''POR'') for this review is March 1, 2006, through February 28, 2007.

Ten respondents reported that they had no exports or sales of the subject merchandise during the POR. After checking U.S. Customs and Border Protection data, we are preliminarily rescinding our review of these companies. Additionally, in conducting the review, the Department found that both Max Fortune Industrial Limited & Max Fortune (FETDE) Paper Products Co., Ltd. (collectively ''Max Fortune'') and Guilin Qifeng Paper Co., Ltd. (''Guilin Qifeng'') reported subject sales to the United States during the POR, which the Department found to have entered as not subject to antidumping duties, and thus were liquidated without the assess of such duties. With respect to Max Fortune, the Department will continue to collect additional information from Max Fortune and CBP, and consider this issue for the final results. With respect to Guilin Qifeng, because we found that Guilin Qifeng made no dutiable entries of subject tissue paper during the POR, the Department is preliminarily rescinding its review with respect to Guilin Qifeng. If these preliminary results are adopted in our final results of this review, we will instruct CBP to assess antidumping duties on all appropriate entries of subject merchandise during the POR.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice, unless extended.

**EFFECTIVE DATE:** April 4, 2008

**FOR FURTHER INFORMATION CONTACT:** Bobby Wong or Michael Quigley, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0409 or (202) 482–4047, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 3, 2007, the Department published a notice of *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 72 FR 9505 (March 2, 2007). On March 26, 2007, in accordance with 19 CFR 351.213(b), the Department received a timely request from Guilin Qifeng for an administrative review. On March 30, 2007, in accordance with 19 CFR 351.213(b), the Department received a timely request from Max Fortune, and from Seaman Paper Company of Massachusetts, Inc. (''petitioner'') for a review of five companies.[1] On April 2, 2007, in accordance with 19 CFR 351.213(b), the Department received a timely review request from Foshan Sansico Co., Ltd.

On April 27, 2007, the Department published the notice of initiation of an administrative review of the antidumping duty order on certain tissue paper products from the PRC covering the period March 1, 2007, through February 28, 2007. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 20986 (April 27, 2007). On May 1, 2007, the Department requested quantity and value (''Q&V'') information from all parties named in the initiation notice. On May 15, 2007, the Department received the following documents: 1) a separate rate certification and Q&V response from Guilin Qifeng; 2) a letter from Vietnam Quijiang certifying that it made no entries of the subject merchandise during the POR; and 3) a certification it made no entries of subject merchandise during the POR, and a request from Samsam to rescind the Department's review with respect to Samsam. On May 16, 2007, the Department received a Q&V response from the Sansico Group, certifying that none of its affiliates made entries of subject merchandise to the United States during the POR. On May 17, 2007, the Department received Max Fortune's Q&V response and its separate rate certification. On May 22, 2007, the Sansico Group again publicly certified that none of its affiliates made entries of subject merchandise during the POR.

On May 29, 2007, the Department selected Max Fortune and Guilin Qifeng as mandatory respondents in the administrative review, as they were responsible for 100 percent of the reported imports of certain tissue paper from the PRC under review. *See* May 29, 2007, memorandum to James C. Doyle, Director; from Scot T. Fullerton, Senior International Trade Analyst through Christopher D. Riker, Program Manager regarding Certain Tissue Paper Products from the People's Republic of China: Selection of Respondents.

On June 1, 2007, the Department received comments from petitioner regarding Samsam's Q&V response. In

[1] Max Fortune Industrial Limited, & Max Fortune (FETDE) Paper Products Co., Ltd. (collectively ''Max Fortune''); Samsam Production Limited, Guangzhou Baxi Printing Products Limited, Guilin Samsam Paper Products Ltd. (collectively ''Samsam''); Guilin Qifeng Paper Co., Ltd. (''Guilin Qifeng''); Vietnam Quijiang Paper Co., Ltd. (''Vietnam Quijiang''); and Foshan Sansico Co., Ltd., Sansico Asia Pacific Limited, PT Grafitecindo Ciptaprima, PT Printec Perkasa, PT Printec Perkasa II, & PT Sansico Utama (collectively ''Sansico Group'').

response, on June 7, 2007, the Department received rebuttal comments from Samsam. On June 14, 2007, the Department received additional comments from petitioner in response to Samsam's June 7, 2007, rebuttal comments.

On August 24, 2007, in response to Max Fortune's request, the Department extended the deadline to submit new factual information on the record of this review.[2] On August 28, 2007, the Department invited interested parties to comment on the Department's surrogate country selection and/or significant production in the other potential surrogate countries and to submit publicly available information to value the factors of production. *See* August 28, 2007, letter to All Interested Parties; from Scot T. Fullerton, Program Manager regarding the Administrative Review of Certain Tissue Paper Products from the People's Republic of China. On October 2, 2007, the Department received comments from petitioner regarding the Department's selection of India as the surrogate country. On October 30, 2007, in response to petitioner's October 25, 2007, request, the Department extended the deadline to submit new factual information regarding surrogate value data. *See* Memorandum to the File; from Bobby Wong, International Trade Compliance Analyst regarding the Second Administrative Review of Certain Tissue Paper Products from the People's Republic of China. On November 14, 2007, in response to petitioner's November 13, 2007, request, the Department further extended the deadline to submit surrogate value information. On November 14, 2007, Guilin Qifeng submitted Indian surrogate value information on the record of the administrative review. *See* November 14, 2007, letter to the Department; from Guilin Qifeng Paper Co., Ltd. regarding: Certain Tissue Paper Products from the People's Republic of China: Submission of Surrogate Value Information. On November 16, 2007, petitioners submitted Indian surrogate value information on the record of the administrative review. *See* letter to the Department; regarding: Administrative Review of Certain Tissue Paper Products from the People's Republic of China – Surrogate Values, dated November 16, 2007.

On November 20, 2007, the Department published an extension of the time limit to complete the preliminary results. *See Certain Tissue Paper Products from the People's Republic of China: Extension of Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 65298 (November 20, 2007).

**Questionnaires**

On May 30, 2007, the Department issued the antidumping duty questionnaire (''original questionnaire'') to Max Fortune and Guilin Qifeng.

*Max Fortune:*

On June 20, 2007, the Department received Max Fortune's timely submission of its section A questionnaire response. On July 16, 2007, the Department received Max Fortune's timely submission of its section C and D questionnaire response, and sales and cost reconciliation. On September 5, 2007, the Department received from petitioner, comments regarding Max Fortune's section A, C, and D questionnaire responses.

On December 19, 2007, the Department issued a supplemental questionnaire (''first supplemental questionnaire'') to Max Fortune. On January 17, 2008, the Department received Max Fortune's timely response to the Department's first supplemental questionnaire. On February 1, 2008, the Department issued an additional supplemental questionnaire (''second supplemental questionnaire'') to Max Fortune. On February 22, 2008, and February 27, 2008, the Department received Max Fortune's timely responses to the Department's second supplemental questionnaire.

*Guilin Qifeng:*

On June 27, 2007, the Department received Guilin Qifeng's timely submission of its section A questionnaire response. On July 6, 2007, in response to a request from Guilin Qifeng, the Department extended the deadline for Guilin Qifeng to submit its response to the Department's section C and D questionnaire. On July 13, 2007, the Department received Guilin Qifeng's timely submission of its section C and D questionnaire responses. On July 18, 2007, the Department received Guilin Qifeng's timely submission of its sales and cost reconciliation.[3] On September 10, 2007, the Department received comments from petitioner regarding Guilin Qifeng's section A, C, and D questionnaire responses.

On November 13, 2007, the Department issued a supplemental questionnaire to Guilin Qifeng. On December 5, 2007, the Department received Guilin Qifeng's timely response to the Department's supplemental questionnaire.

On February 25, 2008, the Department issued a second supplemental questionnaire to Guilin Qifeng. On February 29, 2008, the Department received a timely response to the second supplemental questionnaire. On March 6, 2008, the Department received comments from Petitioner, regarding Guilin Qifeng's second supplemental questionnaire response.

**Non–Market Economy Country**

In every case conducted by the Department involving the PRC, the PRC has been treated as a non–market economy (''NME'') country. *See, e.g., Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 72 FR 58642 (October 16, 2007). Pursuant to the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. *See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 7013 (February 10, 2006); and *Carbazole Violet Pigment 23 from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part*, 71 FR 65073, 65074 (November 7, 2006) unchanged in *Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 26589 (May 10, 2007). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

**Surrogate Country and Factors**

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market–

[2] *See* August 24, 2007, letter from Catherine Bertrand, Acting Program Manager, AD/CVD Operations, Office 9; to All Interested Parties; regarding the Administrative Review of Certain Tissue Paper Products from the People's Republic of China for the period March 1, 2006 to February 28, 2007.

[3] However, the Department informed Guilin Qifeng that it had incorrectly placed the document on the record of the tissue paper anticircumvention inquiry, and therefore requested that Guilin Qifeng re-file its submission on the proper segment of the review, which the Department received and considered timely on October 25, 2007. *See* October 24, 2007, letter from Vietnam Quijiang Paper Co., Ltd. to the US Department of Commerce regarding Certain Tissue Paper Products from China, Circumvention Inquiry: Withdrawal of Previously Submitted Documents From the Administrative Review; on the record of the concurrent Circumvention Inquiry.

economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. Thus, on August 24, 2007, we requested a list of possible surrogate countries that are at a level of economic development that is comparable to the PRC from Import Administration's Office of Policy (''the OP''). *See* Memorandum from Kristina Horgan, Senior International Trade Analyst, AD/CVD Operations, Office 9, to Ronald Lorentzen, Director, Office of Policy, Re: Administrative Review of Certain Tissue Paper Products from the People's Republic of China (August 24, 2007).

On August 27, 2007, the OP issued memorandums identifying five countries as being at a level of economic development comparable to the PRC for the POR for the administrative review. See Memorandum from Ron Lorentzen, Director, Office of Policy, to Catherine Bertrand, Acting Program Manager, AD/CVD Operations, Office 9, Re: Antidumping Duty Administrative Review of Certain Tissue Paper Products from the People's Republic of China: Request for a List of Surrogate Countries (August 27, 2007) (''Policy Memo''). The countries identified in the Policy Memo were India, Sri Lanka, Egypt, Indonesia and the Philippines. However, the Department has found that of the five countries identified as at a comparable level of economic development, only Egypt and India were producers of identical merchandise. Furthermore, World Trade Atlas[4] (''WTA'') data show that of the five countries identified in the Policy Memo, in calendar year 2006, India was by far the largest exporter of identical merchandise. See March 31, 2008, Memo to the File; from Scot T. Fullerton, Program Manager regarding WTA Export Data.

On August 28, 2007, the Department issued a request for parties to submit comments on surrogate country selection for consideration in these preliminary results in the administrative review. *See* letter from Scot T. Fullerton, Program Manager to All Parties, dated May 21, 2007. On October 2, 2007, Petitioner submitted comments regarding the selection of the surrogate country and argued that India is the most appropriate surrogate country. *See* October 2, 2007 Letter to the Department; from petitioner regarding the Administrative Review of Certain Tissue Paper Products from the People's Republic of China – Comments on Surrogate Country Selection. No other party submitted comments regarding selection of the surrogate country. Furthermore, no interested party has submitted surrogate values from any country other than India.

Therefore, the Department has preliminarily determined that: 1) India is at a comparable level of economic development to China; 2) India has significant production of identical merchandise; and 3) India provides the best opportunity to use quality, publicly available, contemporaneous, data to value the factors of production. Accordingly, given that India meets the Department's criteria for surrogate–country selection, we preliminarily determine that India is an appropriate surrogate country for all inputs in this review.

**Scope of Order**

The tissue paper products subject to this order are cut–to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this order may or may not be bleached, dye–colored, surface–colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this order is in the form of cut–to-length sheets of tissue paper with a width equal to or greater than one–half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this order may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

The merchandise subject to this order does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (''HTSUS''). Subject merchandise may be under one or more of several different subheadings, including: 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.31.1000; 4804.31.2000; 4804.31.4020; 4804.31.4040; 4804.31.6000; 4804.39; 4805.91.1090; 4805.91.5000; 4805.91.7000; 4806.40; 4808.30; 4808.90; 4811.90; 4823.90; 4820.50.00; 4802.90.00; 4805.91.90; 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.[5]

Excluded from the scope of this order are the following tissue paper products: (1) tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die–cut to the shape of a toilet seat, i.e., disposable sanitary covers for toilet seats; and (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTSUS 4803.00.20.00 and 4803.00.40.00).

**Preliminary Partial Rescission of 2006/2007 Administrative Review**

Foshan Sansico, Samsam, Guangzhou Baxi, Guilin Samsam, PT Grafitecindo, PT Printec, PT Printec II, Utama, Sansico, and Vietnam Quijiang, certified that they did not export subject tissue paper from China to the United States during the POR. To corroborate these certifications, the Department reviewed PRC tissue paper shipment data maintained by CBP, and found no discrepancies with the statements made by these companies. *See* March 31, 2008, Memorandum to the File; from Scot T. Fullerton, Program Manager regarding CBP Corroboration. Therefore, for the reasons noted above, the Department is preliminarily rescinding the administrative review with respect to Foshan Sansico, Samsam, Guangzhou Baxi, Guilin Samsam, PT Grafitecindo, PT Printec, PT Printec II, Utama, Sansico, and Vietnam Quijiang.

*Guilin Qifeng:*

In its response to the Department's quantity and value questionnaire and in its response to the Department's original questionnaire, Guilin Qifeng certified that it made export sales of subject tissue paper to the United States during the POR. Furthermore, in its response, Guilin Qifeng provided sales and shipping documentation demonstrating that the shipments were in fact sales of subject tissue paper during the POR. *See* June 27, 2007, letter from Guilin Qifeng; to the Department regarding Tissue Paper Products from the People's Republic of China: Section A Response of Guilin Qifeng Paper Co., Ltd; and December 5, 2007, letter from Guilin Qifeng to the Department regarding 2nd

[4] World Trade Atlas, published by Global Trade Information Services, Inc., is a secondary electronic source that republishes the import prices reported in the Monthly Statistics of the Foreign Trade of India, Volume II: Imports (''MSFTI''), as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India.

[5] On January 30, 2007, at the direction of CBP, the Department added the following HTSUS classifications to the AD/CVD module for tissue paper: 4802.54.3100, 4802.54.6100, and 4823.90.6700. However, we note that the six-digit classifications for these numbers were already listed in the scope.

Review Certain Tissue Paper Products from China, Supplemental Questionnaire Response of Guilin Qifeng Paper Co., Ltd. However, in reviewing CBP data for PRC exports of tissue paper to the United States, the Department found that Guilin Qifeng had no dutiable entries of subject tissue paper during the POR. On February 28, 2008, the Department released CBP import data, which identified each of Guilin Qifeng's reported sales, to counsel for Guilin Qifeng. In its letter accompanying the data, the Department noted that, according to the CBP data, each of Guilin Qifeng's reported POR sales were liquidated and not subject to antidumping duties. In response, counsel for Guilin Qifeng stated that due to the proprietary nature of the data, it was unable to share the data with its client for the purposes of comment. Subsequently, the Department has notified CBP in regards to the potentially misclassified entries[6] and requested from CBP copies of Guilin Qifeng's entry documentation of the alleged liquidated entries to determine if the entries were, in fact, subject to the antidumping duty order. We will continue to examine the issue for the final results.

For the preliminary results, the Department has examined all of the information provided by Guilin Qifeng as well as the CBP import data, and finds that Guilin Qifeng's entries of subject tissue paper were classified upon entry as not subject to the antidumping duty order, and therefore not subject to suspension of liquidation. We note that one of the Department's primary functions in the course of an administrative review is to determine the appropriate antidumping duty margin to apply to subject merchandise, for the purpose of directing CBP to liquidate suspended entries of subject merchandise at that rate. *See* section 751(a)(2)(C) of the Act (stating that one of the purposes of an administrative review is to assess the current amount of antidumping duties on entries of subject merchandise). Because the record currently shows that Guilin Qifeng's entries of subject merchandise were made as not being subject to antidumping duties, and thus has no suspended entries, consistent with the Act and with the Department's past practice, the Department is preliminarily rescinding its review with respect to Guilin Qifeng. *See Certain Cut–to-Length Carbon–Quality Steel Plate Products From Italy: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 39299 (July 12, 2006).

**Separate Rates**

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''Sparklers''). In this review, in support of its claim for a company–specific rate, Max Fortune has reported that it is a wholly foreign owned company registered and located in Hong Kong. *See* letter to the Department; from Max Fortune regarding Certain Tissue Paper from the People's Republic of China (June 20, 2006). Consequently, no additional separate rates analysis is necessary for Max Fortune. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026 (April 30, 1996).

**Normal Value Comparisons: Max Fortune**

To determine whether Max Fortune's sales of the subject merchandise were made at prices below normal value, we compared U.S. price to normal values, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice, below.

**U.S. Price – Export Price**

We based U.S. price on export price (''EP'') in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price (''CEP'') was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States. Where applicable, we deducted foreign inland freight, insurance, foreign brokerage and handling expenses, ocean freight, and marine insurance from the starting price (gross unit price), in accordance with section 772(c) of the Act.

Max Fortune also certified that it made export sales of subject tissue paper to the United States during the POR. To corroborate these certifications, the Department reviewed subject tissue paper shipment data maintained by CBP. Based on the CBP data, the Department found that several of Max Fortune's reported U.S. sales of subject merchandise that entered during the POR may have been misclassified, and appeared to have been liquidated by CBP. On February 22, 2008, in response to the Department's second supplemental questionnaire requesting clarification regarding the liquidated entries, counsel for Max Fortune stated that they were unable to confirm the Department's findings with their client due to the proprietary nature of the CBP data. Given that certain reported sales by Max Fortune appear to have been liquidated, the Department will continue to request additional information from Max Fortune and CBP, and consider this issue for purposes of assessment for the final results. *See* Memorandum to the File, through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, from Bobby Wong, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding Second Antidumping Administrative Review of Certain Tissue Paper from the People's Republic of China: Max Fortune Industrial Limited and Max Fortune (FETDE) Paper Products Co., Ltd., Analysis Memorandum for the Preliminary Results of Review (March 31, 2008) (''Max Fortune Analysis Memo''). Furthermore, the Department has notified CBP in regards to the potentially misclassified entries, as well as requested Max Fortune's entry documentation covering the alleged liquidated entries, and will continue to examine the issue for the final results.

**Use of Facts Available**

Section 776(a)(1) of the Act mandates that the Department use facts available if necessary information is not available on the record of an antidumping proceeding. In the instant review, Max Fortune has indicated that its records for dye and ink consumption in the papermaking and paper printing stages of production do not permit it to report the FOP data in a manner consistent with the Department's requests for specific consumption of dyes on a color specific basis. *See* January 17, 2008, letter to the Department from Max Fortune regarding Certain Tissue Paper Products from the People's Republic of China. Pursuant to section 776(a)(2)(B) of the Act, Max Fortune has therefore failed to provide information relevant to the Department's analysis. Thus, consistent with section 782(d) of the Act, the Department has determined it necessary to apply facts otherwise available. Consistent with the

[6] See March 31, 2008, letter from David M. Spooner, Assistant Secretary for Import Administration, United States Department of Commerce; to Thomas S. Winkowski, Assistant Commissioner, Office of Field Operations, U.S. Customs and Border Protection.

Department's application in the previous segment of the instant review, the Department has preliminarily determined to apply the average Indian import values for three dye types, which are commonly used in the production of tissue paper, to value the aggregate amount of dye consumed in the production of the subject tissue paper. Therefore, the Department is also requesting comments from parties regarding 1) the appropriateness of amending the Department's CONNUM requirement to report the consumption of inks and dyes on a color–specific basis, and 2) the application of the methodology described above to value the aggregate consumption of ink and dyes for the purposes of the final results and subsequent reviews.

**Factors of Production**

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production which included, but were not limited to: (A) hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. We used the factors of production reported by the producer for materials, energy, labor, and packing. To calculate NV, we multiplied the reported unit factor quantities by publicly available Indian surrogate values.

In the instant review, Max Fortune reported that it purchased an input, which was consumed in the production of the merchandise under review, from a market–economy (''ME'') supplier and paid for in a market–economy currency. Section 773(c) of the Act and 19 CFR 351.408(c)(1) requires the Department to accept input prices to value the factors of production when the input is purchased from a ME supplier and paid for in a ME currency. Furthermore, consistent with the Department's stated policy reflected in *Antidumping Methodologies: Market Economy Inputs, Expected Non–Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716 (October 19, 2006) (''*2006 Statement of Policy*''), when a sufficient proportion of an input is purchased from a market economy, the Department will use the reported market economy prices to value the appropriate inputs when the item was paid for in a market economy currency. For purposes of the preliminary results, we have determined that Max Fortune's reported market economy purchases accounted for a significant portion of total purchases of that input and, therefore, have used the reported purchase prices to value the input in the Department's normal value calculation. *See* Max Fortune Analysis Memo.

Normally, the Department prefers to use factors of production data that accurately represent the quantity of inputs consumed on a control number (''CONNUM'')-specific basis. In the present case, however, Max Fortune has indicated that its records for dye and ink consumption in the papermaking and paper printing stages of production do not permit it to report the FOP data in a manner consistent with the Department's requests. Pursuant to section 776(a)(2)(B) of the Act, however, because Max Fortune failed to provide information relevant to the Department's analysis, consistent with section 782(d) of the Act, the Department has determined to apply facts otherwise available with regard to this factor of production. We have used the average Indian import values for three dye types, as discussed above, as facts available to value the aggregate consumption of dyes used in the production of the subject tissue paper.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data, in accordance with our normal practice. *See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6; and *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5. When we used publicly available import data from the Ministry of Commerce of India (''Indian Import Statistics'') for March 2006 through February 2007, as published by the WTA, to value inputs sourced domestically by PRC suppliers, we added a surrogate cost for freight using the shorter of the reported distance from the domestic supplier to the factory or the distance from the closest seaport to the factory. *See Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). When we used non–import surrogate values for factors sourced domestically by PRC suppliers (*e.g.*, market economy purchased inputs), we based freight for this input on the actual distance from the input supplier to the site at which the input was consumed.

Additionally, in instances where we relied on Indian import data to value inputs, in accordance with the Department's practice, we excluded imports from both NME countries and countries deemed to maintain broadly available, non–industry-specific subsidies which may benefit all exporters to all export markets (*i.e.*, Indonesia, South Korea, and Thailand) from our surrogate value calculations. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 57420 (November 15, 2001) and accompanying Issues and Decision Memorandum at Comment 1; See also Memorandum to the File, through James C. Doyle, Director, Office 9, and Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9; from Michael Quigley, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding Antidumping Duty Administrative Review of Certain Tissue Paper from the People's Republic of China: Factors of Valuation for the Preliminary Results (March 31, 2008) (''Factor Valuation Memo''). This memorandum is on file in the Central Records Unit (''CRU''), room 1117 of the Department building.

Where we could not obtain publicly available information contemporaneous with the POR to value factors of production, we inflated the surrogate value using the Indian Wholesale Price Index (''WPI''), as published in the *International Financial Statistics* of the International Monetary Fund, for those surrogate values in Indian rupees to be contemporaneous with the POR. We also made currency conversions, where necessary, pursuant to section 773A of the Act and 19 CFR 351.415, to U.S. dollars using the daily exchange rate corresponding to the reported date of each sale. We relied on the daily exchanges rates posted on the Import Administration website (http://www.trade.gov/ia/).

Specifically, the Department used Indian Import Statistics to value the raw material and packing material inputs that Max Fortune used to produce the merchandise under review during the POR, except where listed below. For a detailed description of all surrogate values used for Max Fortune, *see* Factor Valuation Memo at Exhibit 2.

*Energy:*

Max Fortune reported the consumption of water, electricity, and coal as energy inputs consumed in the production of the subject tissue paper. To value water, we calculated the average water rates from various regions as reported by the Maharashtra Industrial Development Corporation,

*http://midcindia.org*, dated June 1, 2003, and inflated the value for water to be contemporaneous to the POR. *See* Factor Valuation Memo at Exhibit 8. To value electricity, we used the latest rates provided by the OECD's International Energy Agency's publication: *Key World Energy Statistics* from 2003. Because the electricity prices are based on annual year 2000 price, we inflated the value for electricity to be contemporaneous to the POR–average WPI rate. *See* Factor Valuation Memo at Exhibit 7. For coal, we applied the specified price for the appropriate grade of coal, as published in the 2005 Indian Minerals Yearbook and data published by the Coal India Limited for December 2007. See Factor Valuation Memo at Exhibit 7.

*Financial Ratios:*

Consistent with the determination in the LTFV investigation, to value the surrogate financial ratios for factory overhead, selling, general & administrative expenses, and profit, the Department relied on the publicly available information in the financial statements for Pudumjee Pulp & Paper Mills Ltd. (''Pudumjee'') for fiscal year 2006–2007, submitted by petitioner on November 16, 2007. The annual report covers the period April 1, 2006, to March 31, 2007, and also includes data for the 2005–2006 fiscal year, covering the entire POR. We have determined that Pudumjee's financial statements are appropriate for use in these preliminary results because Pudumjee is a producer of comparable merchandise and its financial data are contemporaneous with the POR. *See* Factor Valuation Memo at Exhibit 11.

*Wage Rate:*

Because of the variability of wage rates in countries with similar levels of per–capita gross national product, 19 CFR 351.408(c)(3) requires the use of a regression–based wage rate. Therefore, to value the labor input, we used the PRC's regression–based wage rate published by Import Administration on its website, http://www.trade.gov/ia/. We note that this wage rate is calculated in accordance with the Department's revised methodology. *See Expected Non Market Economy Wages: Request for Comments on 2006 Calculation*, 72 FR 949 (January 9, 2007) and *Antidumping Methodologies: Market Economy Inputs, Expected Non Market Economy Wages, Duty Drawback, and Request for Comments*, 71 FR 6176 (October 19, 2006). *See also* Factor Valuation Memo.

*Movement Expenses:*

To value truck freight, we calculated a weighted–average freight cost based on publicly available data from *www.infreight.com*, an Indian inland freight logistics resource website. See Factor Valuation Memo at Exhibit 10.

To value brokerage and handling, we used a simple average of the publicly summarized version of the average value for brokerage and handling expenses reported in the U.S. sales listings in Essar Steel Ltd.'s (''Essar'') February 28, 2005, Section C submission in the antidumping duty review of certain hot–rolled carbon steel flat products from India, for which the POR was December 1, 2003, through November 30, 2004; information from Agro Dutch Industries Ltd.'s (Agro Dutch) May 25, 2005, Section C submission, taken from the administrative review of preserved mushrooms from India, for which the POR was February 1, 2004, through January 31, 2005; and information from Kejriwal Paper Ltd.'s (''Kejriwal'') January 9, 2006, Section C submission, taken from the investigation of certain lined paper from India, for which the POR was July 1, 2004, through June 30, 2005. *See Certain Hot–Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018 (January 12, 2006); *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006); and *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006). *See also* Factor Valuation Memo at Exhibit 6.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final determination in an antidumping administrative review, interested parties may submit publicly available information to value the factors of production within 20 days after the date of publication of the preliminary determination.[7]

[7] In accordance with 19 CFR 351.301(c)(1), for the final determination of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission*, in Part, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

**Preliminary Results of Review**

We preliminarily determine that the following antidumping duty margins exist:

CERTAIN TISSUE PAPER FROM THE PRC

| Individually Reviewed Exporters | Percent |
|---|---|
| Max Fortune Ltd. ..... | 0.00 |

For details on the calculation of the antidumping duty weighted–average margin for each company, *see* the respective company's analysis memorandum for the preliminary results of the first administrative review of the antidumping duty order on tissue paper from the PRC, dated March 31, 2008. Public versions of these memoranda are on file in the CRU.

**Assessment Rates**

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review. For assessment purposes, where possible, we calculated importer–specific assessment rates for tissue paper from the PRC via *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis*. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of these reviews and for future deposits of estimated duties, where applicable.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for Max Fortune, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis*, *i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for all other previously investigated or reviewed PRC and non–

PRC exporters that have separate rates, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 112.64 percent; and (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Schedule for Final Results of Review**

The Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing will normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(ii). As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited in accordance with 19 CFR 351.309(c)(2)(ii). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed in accordance with 19 CFR 351.309(d). The Department will issue the final results of this review, which will include the results of its analysis of issues raised in the briefs, not later than 120 days after the date of publication of this notice in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.213(h)(1).

**Notification to Importers**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 31, 2008.

**Stephen J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E8–7102 Filed 4–3–08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–836]**

### Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to a request from Geo Specialty Chemicals, Inc. (''GSC''), a domestic glycine producer, the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on glycine from the People's Republic of China (''PRC''). This review covers Nantong Dongchang Chemical Industry Corporation (''Nantong Dongchang'') and Baoding Mantong Fine Chemistry Co., Ltd. (''Baoding Mantong''). The period of review (''POR'') is March 1, 2006, through February 28, 2007. On July 26, 2007, Nantong Dongchang indicated that it would not reply to the Department's antidumping questionnaire in this administrative review; therefore, we have preliminarily determined to apply facts otherwise available with an adverse inference (''AFA'') to Nantong Dongchang. In addition, we have preliminarily determined that Baoding Mantong made sales below normal value (''NV''). With respect to the 21 other companies for whom petitioners submitted a request for review and a subsequent timely withdrawal request, we are rescinding this review.[1] The preliminary results are listed below in the section titled ''Preliminary Results of Review.'' If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (''CBP'') to assess the *ad valorem* margins against the entered value of each entry of the subject merchandise during the POR.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

**EFFECTIVE DATE:** April 4, 2008.

**FOR FURTHER INFORMATION CONTACT:** Michael Quigley or Toni Dach, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4047, or (202) 482–1655, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On March 29, 1995, the Department published in the **Federal Register** an antidumping duty order on glycine from the PRC. *See Antidumping Duty Order: Glycine from the People's Republic of China*, 60 FR 16116 (March 29, 1995). On March 2, 2007, the Department published an *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 9505 (March 2, 2007). On March 28, 2007, GEO Speciality Chemicals, Inc. (''GSC''), requested that the Department conduct an administrative review of sales of subject merchandise by 26 companies to the United States during the POR, in accordance with section 351.213(b) of the Department's regulations. Those 26 companies are: A.H.A. International Company, Ltd.; Amol Biotech Limited; Baoding Mantong; Beijing Jian Li Pharmaceutical Company; Changzhou Dahua Importer and Exporter (Group); Chem–Base (Nantong) Laboratories Company; China Container Line (USA); Dongchang Chemical Industrial Company; Hua Yip Company, Inc.; Jizhou City Huayang Chemical Company, Ltd.; Nantong Dongchang; Orichem International Ltd.; Qingdao Samin Chemical Company,

[1] Although the Department initiated an administrative review for 24 companies, Nantong Dongchang was also identified in the initiation notice as Dongchang Chemical Industrial Company, as GSC indicated in its July 27, 2007, letter to the Department.

Ltd.; Shanghai Dayue International; Shanghai Light Industrial; Shanghai Waseta International; Sinochem Qingdao Company, Ltd.; Sinosweet Company, Ltd.; Sumee China Jiangsu Machinery; Sumec (On Behalf of Nantong); Taigeng Global Enterprises Ltd.; Textiles Silk Light Ind. Products; Tianjin Tiancheng Pharmaceutical Company; Weifang Sunwin Chemicals Company, Ltd.; Yicheng Logistics Shanghai Ltd.; and Zheijiang Ruili Cemented Carbide. On March 30, 2007, Nantong Dongchang requested an administrative review of its sales during the POR, in accordance with section 351.213(b) of the Department's regulations. On April 5, 2007, prior to initiation of the review, GSC withdrew its review request with respect to two companies: Hua Yip Company, Inc. and Taigeng Global Enterprises Ltd, because GSC was unable to provide addresses for these two companies.

On April 27, 2007, the Department initiated the antidumping duty administrative review with respect to the 24 remaining companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 20986 (April 27, 2007). On June 14, 2007, the Department selected Baoding Mantong and Nantong Dongchang as mandatory respondents. See Memorandum to James C. Doyle, Director, AD/CVD Operations, Office 9, through Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, from Catherine C. Bertrand, Senior International Trade Analyst, AD/CVD Operations, Office 9, regarding 2006/2007 Antidumping Duty Administrative Review of Glycine from the People's Republic of China: Selection of Respondents. On November 30, 2007, the Department extended the deadline for the publication of the preliminary results to March 31, 2008. *See Glycine from the People's Republic of China: Extension of Time Limits for the Preliminary Results of the 2006–2007 Administrative Review*, 72 FR 67701 (November 30, 2007).

**Questionnaires**

On June 14, 2007, the Department issued standard non–market economy (''NME'') antidumping duty questionnaires to Baoding Mantong and Nantong Dongchang. On July 3, 2007, and July 23, 2007, the Department issued extensions of the deadline for Nantong Dongchang to file its response to the questionnaire. On July 26, 2007, Nantong Dongchang notified the Department that it would not reply to the Department's antidumping questionnaire in this administrative review. On July 27, 2007, GSC withdrew its request for administrative review for all companies except Nantong Dongchang and Baoding Mantong.

Baoding Mantong submitted its section A response on July 5, 2007, and its response to sections C and D on July 20, 2007. Baoding Mantong submitted supplemental responses on December 3, 2007, February 28, 2008, and March 7, 2008.

**Surrogate Country and Factors**

On September 17, 2007, the Department's Office of Policy issued a memorandum listing India, Sri Lanka, Egypt, Indonesia, and the Philippines as economically comparable surrogate countries for this review. On October 5, 2007, we invited interested parties to comment on the Department's surrogate country selection and to submit publicly available information to value the factors of production (''FOPs''), and attached the memorandum outlining the appropriate surrogate countries in this case based solely on economic comparability. *See* Letter to All Interested Parties, from Scot T. Fullerton, Program Manager, Office 9, Import Administration, regarding 2006–2007 Administrative Review of Administrative Review of Glycine from the People's Republic of China (''China''): Surrogate Country List, at Attachment One (''Surrogate Country Letter Attachment''). On November 20, 2007, Baoding Mantong submitted comments regarding the selection of surrogate values. On February 7, 2008, GSC submitted information for the Department to consider in valuing the FOPs. On February 29, 2008, GSC submitted comments regarding the surrogate value information placed on the record. All surrogate value data submitted by both parties were from Indian sources.

When the Department is investigating imports from an NME country, section 773(c)(1) of the Tariff Act of 1930, as amended (''the Act''), directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

India is among the countries comparable to the PRC in terms of overall economic development. In its February 7, 2008, letter commenting on surrogate country selection, GSC suggested that India be the primary surrogate country because it is a significant producer of glycine (whereas the other selected countries are not), and also because of the availability of surrogate value data from Indian sources. In addition, based on publicly available information placed on the record (*i.e.*, export data as found in the Surrogate Country Letter Attachment), India is a significant producer of the subject merchandise. Furthermore, India has been the primary surrogate country in past segments of this case, and both GSC and Baoding Mantong submitted surrogate values based solely on Indian data that are contemporaneous to the POR.

Given that India meets the criteria listed in sections 773(c)(4)(A) and (B) of the Act, interested parties have placed only Indian surrogate value information on the record of this review, and our use of India as the surrogate country in past reviews of glycine, we have selected India as the surrogate country for purposes of these preliminary results. The sources of the surrogate factor values are discussed under the ''Normal Value'' section below and in Memorandum to the File through Scot T. Fullerton, Program Manager, Office 9 from Toni Dach, International Trade Analyst, Office 9: Administrative Review of Glycine from the People's Republic of China: Surrogate Values for the Preliminary Results, March 28, 2008 (''Surrogate Values Memo''). In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of an antidumping administrative review, interested parties may submit publicly available information to value the factors of production within 20 days after the date of publication of the preliminary determination.[2]

**Scope of the Order**

The product covered by the order is glycine, which is a free–flowing crystalline material, like salt or sugar.

[2] In accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

Glycine is produced at varying levels of purity and is used as a sweetener/taste enhancer, a buffering agent, reabsorbable amino acid, chemical intermediate, and a metal complexing agent. This review covers glycine of all purity levels. Glycine is currently classified under subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of the merchandise under the order is dispositive.

**Separate Rate**

A designation of a country as an NME remains in effect until it is revoked by the Department. See section 771(18)(C)(i) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company–specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). With respect to Nantong Dongchang, as noted above, Nantong Dongchang withdrew from participation in the administrative review; therefore Nantong Dongchang has failed to demonstrate its eligibility for a separate rate. *See* ''PRC–Wide Rate and Facts Otherwise Available'' Section, below.

*A. Absence of De Jure Control*

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589. In a prior administrative review for this case, the Department granted a separate rate to Baoding Mantong. *See Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005). However, it is the Department's policy to evaluate requests for a separate rate individually, regardless of whether the respondent received a separate rate in the past. *See Manganese Metal From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12440, 12441–12442 (March 13, 1998).

In this review, Baoding Mantong submitted a complete response to the separate rates section of the Department's NME questionnaire. *See* Baoding Mantong section A response, July 5, 2008. In its response, Baoding Mantong includes PRC government laws and regulations with respect to corporate ownership, its business license, and narrative information regarding the company's operations and selection of management. The information provided by Baoding Mantong supports a finding of a *de jure* absence of governmental control over their export activities based on: (1) an absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondents, as demonstrated by the PRC laws placed on the record of this review. No party submitted information to the contrary. Accordingly, we preliminarily find an absence of *de jure* control.

*B. Absence of De Facto Control*

The absence of *de facto* governmental control over exports is based on whether the respondent: (1) sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

In its questionnaire responses, Baoding Mantong submitted evidence indicating an absence of *de facto* governmental control over its export activities. Specifically, this evidence indicates that: (1) Baoding Mantong sets its own export prices independent of the government and without the approval of a government authority; (2) Baoding Mantong retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) Baoding Mantong has a general manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors, and the general manager appoints the deputy managers and the manager of each department; and (5) there is no restriction on the company's use of export revenues. Therefore, the Department preliminarily finds that Baoding Mantong has established *prima facie* that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

**Partial Rescission of Review**

In accordance with 19 CFR 351.213(d)(1), as a timely withdrawal request was submitted to the Department by GSC on July 27, 2007, we are rescinding this administrative review with respect to the following 21 companies: A.H.A. International Company, Ltd.; Amol Biotech Limited; Beijing Jian Li Pharmaceutical Company; Changzhou Dahua Importer and Exporter (Group); Chem–Base (Nantong) Laboratories Company; China Container Line (USA); Jizhou City Huayang Chemical Company, Ltd.; Orichem International Ltd.; Qingdao Samin Chemical Company, Ltd.; Shanghai Dayue International; Shanghai Light Industrial; Shanghai Waseta International; Sinochem Qingdao Company, Ltd.; Sinosweet Company, Ltd.; Sumee China Jiangsu Machinery; Sumec (On Behalf of Nantong); Textiles Silk Light Ind. Products; Tianjin Tiancheng Pharmaceutical Company; Weifang Sunwin Chemicals Company, Ltd.; Yicheng Logistics Shanghai Ltd.; and Zheijiang Ruili Cemented Carbide.[3]

**PRC Wide Rate and Facts Otherwise Available**

Nantong Dongchang, which was selected as a mandatory respondent, did not respond to the Department's request for information, and thus has failed to demonstrate its eligibility for a separate rate. The PRC–wide rate applies to all entries of subject merchandise except for entries from PRC producers/exporters that have their own calculated

[3] Tianjin Tiancheng Pharmaceutical Company has a separate rate, and we will liquidate its entries 15 days after publication of this notice. As the remaining 20 companies do not have a separate rate, they are considered part of the PRC-wide entity and any entries will be liquidated at the conclusion of this review.

rate. *See* ''Separate Rates'' section above. Companies that have not demonstrated their entitlement to a separate rate are appropriately considered to be part of the PRC–wide entity. Therefore, we determine it is necessary to review the PRC–wide entity, because Nantong Dongchang is subject to the instant proceeding. In doing so, we note that section 776(a)(1) of the Act mandates that the Department use the facts available if necessary information is not available on the record of an antidumping proceeding. In addition, section 776(a)(2) of the Act provides that if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department shall promptly inform the party submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. Section 782(d) of the Act additionally states that if the party submits further information that is unsatisfactory or untimely, the administering authority may, subject to subsection (e), disregard all or part of the original and subsequent responses. Section 782(e) of the Act provides that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) the information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority with respect to the information; and (5) the information can be used without undue difficulties.

As addressed below for Nantong Dongchang, we find that the PRC–wide entity, which includes Nantong Dongchang, did not respond to our request for information and that necessary information either was not provided, or the information provided could not be verified and is not sufficiently complete to enable the Department to use it for these preliminary results. Therefore, we find it necessary, under section 776(a)(2) of the Act, to use facts otherwise available as the basis for the preliminary results of this review for the PRC–wide entity.

Nantong Dongchang submitted a response to the Department's Quantity and Value questionnaire. The Department granted Nantong Dongchang an extension on July 3, 2007, and another extension on July 23, 2007 to submit its section A response. However, on July 26, 2007, the Department received a notification from Nantong Dongchang stating that it would not submit responses to the Department's antidumping questionnaires. *See* July 26, 2007, letter to the U.S. Department of Commerce, from Nantong Dongchang. Because Nantong Dongchang did not provide its initial questionnaire response, or continue to participate in the review, the company denied the Department an opportunity to analyze any of its POR–specific sales and production information, as well as its eligibility for a separate rate. Because Nantong Dongchang denied the Department the opportunity to further investigate its quantity and value response and, despite several extensions, did not submit any responses to the Department's section A, C and D questionnaires, the Department has preliminarily determined that Nantong Dongchang significantly impeded the Department's proceeding by withholding information, and failing to respond to the Department's request for information within the Department's specified deadlines. Therefore, pursuant to sections 776(a)(2)(A),(B), and (C) of the Act, the Department preliminarily finds that the application of facts available is appropriate for these preliminary results.

Pursuant to section 776(b) of the Act, we find that the PRC–wide entity, which includes Nantong Dongchang, failed to cooperate by not acting to the best of its ability. As noted above, Nantong Dongchang indicated to the Department that it would not participate in this review, or otherwise did not provide the requested information, despite repeated requests that it do so. This POR–specific information was in the sole possession of Nantong Dongchang, and could not be obtained otherwise. Thus, because Nantong Dongchang, and thus the PRC–wide entity, refused to participate fully in this proceeding, we find it appropriate to use an inference that is adverse to the interests of the PRC–wide entity in selecting from among the facts otherwise available. By doing so, we ensure that the companies that are part of the PRC–wide entity, including Nantong Dongchang, will not obtain a more favorable result by failing to cooperate than had they cooperated fully in this review.

**Selection of Adverse Facts Available (''AFA'') Rate**

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In reviews, the Department normally selects, as AFA, the highest rate on the record of any segment of the proceeding. *See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504, 19506 (April 21, 2003). The Court of International Trade (''CIT'') and the Court of Appeals for the Federal Circuit have consistently upheld the Department's practice in this regard. *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (''Rhone Poulenc''); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a LTFV investigation); see also *Kompass Food Trading Int'l v. United States*, 24 CIT 678, 680 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen Int'l Trading Co., Ltd. v. United States*, 360 F. Supp 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''so as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely

manner.'' *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, vol. 1 (1994) (''SAA''), at 870; *see also Notice of Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910, 76912 (December 23, 2004); *D&L Supply Co. v. United States*, 113 F.3d 1220, 1223 (Fed. Cir. 1997). In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer, knowing of the rule, would have produced *current* information showing the margin to be less.'' *Rhone Poulenc*, 899 F.2d at 1190. Consistent with the statute, court precedent, and its normal practice, the Department has assigned the rate of 155.89 percent, the highest rate on the record of any segment of the proceeding, to the PRC–wide entity, which includes Nantong Dongchang, as AFA. *See, e.g., Glycine from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 70 FR 58185 (October 5, 2005) (''*Glycine Sunset Results*''). As discussed further below, this rate has been corroborated.

**Corroboration of Secondary Information Used as AFA**

Section 776(c) of the Act provides that, where the Department selects from among the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as ''{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* SAA at 870. The SAA states that ''corroborate'' means to determine that the information used has probative value. The Department has determined that to have probative value, information must be reliable and relevant. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. SAA, at 870. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra–High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 35627 (June 16, 2003) unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: High and Ultra–High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 62560 (November 5, 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181, 12183 (March 11, 2005).

To be considered corroborated, information must be found to be both reliable and relevant. Unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only sources for calculated margins are administrative determinations. The AFA rate we are applying for the current review, 155.89 percent, the PRC–wide rate established in the LTFV investigation, was determined to have probative value during the 2005 sunset review of glycine from the PRC, as the Department found it to be the only margin that reflects the actions of the PRC–wide entity absent the discipline of an order. *See Glycine from the People's Republic of China; Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 70 FR 58185 (October 5, 2005) and accompanying Issues and Decision Memorandum for the Expedited Sunset Review of the Antidumping Duty Order on Glycine from the People's Republic of China; Final Results, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, at Comment 2 (''*Glycine Sunset Review*''). Furthermore, no information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information continues to be reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Administrative Review*, 61 FR 6812, 6814 (February 22, 1996). Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). As noted, the AFA rate we are applying for the current review was determined to have probative value during the 2005 sunset review of glycine from the PRC, as the Department found it to be the only margin that reflects the actions of the PRC–wide entity absent the discipline of an order. *See Glycine Sunset Review*. Moreover, as there is no information on the record of this review that demonstrates that this rate is not appropriately used as adverse facts available, we determine that this rate has relevance.

As the AFA rate is both reliable and relevant, we find that it has probative value. As a result, the Department preliminarily determines that the AFA margin is corroborated for the purposes of this administrative review and may reasonably be applied to the PRC–wide entity, which includes Nantong Dongchang. Because these are the preliminary results of the review, the Department will consider all margins on the record at the time of the final results of review for the purpose of determining the most appropriate final margin for Nantong Dongchang. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation*, 65 FR 1139 (January 7, 2000) unchanged in *Notice of Final Determination of Sales at Less Than Fair Value; Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation*, 65 FR 42669 (July 11, 2000).

**Non–Market Economy Country**

In every case conducted by the Department involving the PRC, the PRC has been treated as a non–market economy (''NME'') country. *See, e.g., Honey from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 71 FR 34893 (June 16, 2006), and *Honey from the People's Republic of China: Final Results and Rescission in Part, of Antidumping Duty New Shipper Reviews*, 72 FR 37715 (July 11, 2007). Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. *See, e.g., Carbazole Violet Pigment 23 From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part*, 71 FR 65073, 65074 (November 7, 2006) unchanged in *Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 26589 (May 10, 2007). None of the parties to this proceeding have contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

**Normal Value Comparisons**

To determine whether Baoding Mantong's sales of the subject merchandise to the United States were made at a price below NV, we compared its United States prices to a normal value, as described in the ''United States Price'' and ''Normal Value'' section of this notice.

**U.S. Price**

*A. Export Price*

In accordance with section 772(a) of the Act, we calculated the export price (''EP'') for certain sales to the United States for Baoding Mantong because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP (''CEP'') was not otherwise warranted. We calculated EP based on the FOB price to unaffiliated purchasers in the United States.[4] In accordance with section 772(c)(2) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight. This service was either provided by an NME vendor or paid for using an NME currency. Thus, we based the deduction of these movement charges on surrogate values. *See* Surrogate Values Memo for details regarding the surrogate values for movement expenses.

**Normal Value (''NV'')**

*1. Methodology*

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors–of-production methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

*2. Factor Valuations*

In accordance with section 773(c)(1) of the Act, we calculated NV based on factors of production reported by respondent for the POR. To calculate NV, we multiplied the reported per unit factor–consumption rates by publicly available Indian surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production or the distance from the nearest seaport to the factory of production where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). Where we did not use Indian import data, we calculated freight based on the reported distance from the supplier to the factory.

With regard to surrogate values from import statistics, we disregard prices that we have reason to believe or suspect may be subsidized, such as the prices of inputs from Indonesia, South Korea and Thailand. We have found in other proceedings that these countries maintain broadly available, non–industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision memorandum at Comment 7 (''*CTVs from the PRC*''). The legislative history provides guidance that in making its determination as to whether input values may be subsidized, the Department is not required to conduct a formal investigation. Instead, the Department is to base its decision on information that is available to it at the time it makes its determination. *See* H.R. Rep. 100–576 (1988) at 590. Therefore, based on the information currently available, we have not used prices from these countries in calculating the surrogate values based on Indian import data. We have also disregarded Indian import data from countries that the Department has previously determined to be NME countries, as well as imports from unspecified countries. *See CTVs from the PRC*.

It is the Department's practice to calculate price index adjustors to inflate or deflate, as appropriate, surrogate values that are not contemporaneous with the POR using the wholesale price index for the subject country. *See, e.g., Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of the Antidumping Duty New Shipper Review, 71 FR 38617, 38619 (July 7, 2006)*, unchanged in final, *Certain Preserved Mushrooms from the People's Republic of China: Final Results of the Antidumping Duty New Shipper Review*, 71 FR 66910 (November 17, 2006). Therefore, where publicly available information contemporaneous with the POR with which to calculate surrogate values could not be obtained, surrogate values were adjusted using the Wholesale Price Index (''WPI'') for India, as published in the International Financial Statistics (''IFS'') of the International Monetary Fund (''IMF''). Surrogate values denominated in foreign currencies were converted into U.S. dollars (''USD'') using the applicable average exchange rate based on exchange rate data from the Department's website. In accordance with 19 CFR 351.301(c)(3)(ii), for the final determination in an administrative review, interested parties may submit publicly available information to value the factors of production within 20 days after the date of publication of the preliminary results. *See* Surrogate Values Memo.

[4] We note that certain of Baoding Mantong's sales appeared to have entered the United States as ''type 1'' entries not subject to antidumping duties. *See* Letter from Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, to Baoding Mantong, dated February 29, 2008. We have referred this matter to CBP for possible enforcement action.

The Department used Indian Import Statistics to value the raw material and packing material inputs that Baoding Mantong used to produce the merchandise under review during the POR, except where listed below. For a detailed description of all surrogate values used for Baoding Mantong, *see* Surrogate Values Memo.

**Raw Material:**

To value liquid chlorine, the Department used the values reported for the purchase, manufacture, and sale of liquid chlorine from the publicly available 2006–2007 financial reports of Kanoria Chemicals & Industries Limited (''Kanoria'') and Tata Chemicals Limited (''Tata''), two chemical companies in India that use and produce liquid chlorine, submitted by Baoding Mantong on November 20, 2007. *See* Surrogate Values Memo.

**By–Product:**

Petitioner and Baoding Mantong both placed data from *Chemical Weekly* on the record to value hydrochloric acid. Consistent with past practice and these submissions, the Department has applied a surrogate value for hydrochloric acid using the values submitted by the parties from *Chemical Weekly*. *See* Surrogate Values Memo.

**Energy:**

Baoding Mantong reported the consumption of water, electricity, and coal as energy inputs consumed in the production of glycine. To value water, we calculated the average water rates from various regions as reported by the Maharashtra Industrial Development Corporation, *http://midcindia.org*, dated June 1, 2003, and inflated the value for water to be contemporaneous to the POR. *See* Surrogate Values Memo. To value electricity, we used the latest rates provided by the OECD's International Energy Agency's publication: *Key World Energy Statistics* from 2003. Because the electricity prices are based on annual year 2000 prices; we inflated the value for electricity to be contemporaneous to the POR average WPI rate. *See* Surrogate Values Memo.

**Financial Ratios:**

To value the surrogate financial ratios for factory overhead, selling, general & administrative expenses, and profit, the Department relied on publicly available information contained in the financial statements for the following two companies: Jubilant Organosis Limited of India (''Jubilant''), for fiscal year 2006–2007, submitted by Baoding Mantong on November 20, 2007; and Diamines and Chemical Limited (''Diamines''), for fiscal year 2006–2007, submitted by GSC on February 7, 2008. The annual report covers the period April 1, 2006, to March 31, 2007, and includes data for the 2005–2006 fiscal year as well, covering the entire POR. We have determined that the financial statements for both Jubilant and Diamines are appropriate for use in these preliminary results because both Jubilant and Diamines are producers of comparable merchandise and their financial data are contemporaneous with the POR. *See* Surrogate Values Memo.

**Wage Rate:**

Because of the variability of wage rates in countries with similar levels of per capita gross national product, 19 CFR 351.408(c)(3) requires the use of a regression–based wage rate. Therefore, to value the labor input, we used the PRC's regression–based wage rate published by Import Administration on its website, http://www.trade.gov/ia/. We note that this wage rate is calculated in accordance with the Department's revised methodology. *See Expected Non Market Economy Wages: Request for Comments on 2006 Calculation*, 72 FR 949 (January 9, 2007) and *Antidumping Methodologies: Market Economy Inputs, Expected Non Market Economy Wages, Duty Drawback, and Request for Comments*, 71 FR 6176 (October 19, 2006). *See also* Surrogate Values Memo.

**Movement Expenses:**

To value truck freight, we calculated a weighted–average freight cost based on publicly available data from *www.infreight.com*, an Indian inland freight logistics resource website. *See* Surrogate Values Memo. For a comprehensive list of the sources and data used to determine the surrogate vales for the FOPs, by–products, and the surrogate financial ratios for factory overhead, selling, general and administrative expenses, and profit, *see* Surrogate Values Memo.

**Preliminary Results of the Review**

The Department has determined that the following preliminary dumping margins exist for the period March 1, 2006, through February 28, 2007:

GLYCINE FROM THE PRC

| Manufacturer/Exporter | Weighted–Average Margin (Percent) |
|---|---|
| Baoding Mantong Fine Chemistry Co., Ltd. | 31.82 |

GLYCINE FROM THE PRC—Continued

| Manufacturer/Exporter | Weighted–Average Margin (Percent) |
|---|---|
| PRC–Wide Rate (which includes Nantong Dongchang Chemical Industry Corporation) | 155.89 |

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(1)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the time limit for filing the case briefs. *See* 19 CFR 351.309(d).

Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Requests should contain the following information: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If we receive a request for a hearing, we intend to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

**Assessment Rates**

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer–specific (or customer) ad valorem duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the

examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific assessment rate calculated in the final results of this review is above *de minimis*.

**Cash Deposit Requirements**

Further, the following cash deposit requirements will be effective upon publication of the final results of the administrative review for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by Baoding Mantong, the cash deposit rate will be that established in the final results of review; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company specific rate published for the most recent period; (3) for all other PRC exporters of subject merchandise, which have not been found to be entitled to a separate rate, the cash deposit rate will be PRC wide rate of 155.89 percent; (4) for all non PRC exporters of subject merchandise, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Notification to Importers**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with sections 751(a)(1) and 777(i) of the Act, 19 CFR 351.213, and 19 CFR 351.221(b)(4).

Dated: March 28, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8–7099 Filed 4–3–08; 8:45 am]

**BILLING CODE 3510–DR–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**A–552–802**

### Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** April 4, 2008.

**SUMMARY:** The Department of Commerce (''Department'') has determined that a request for a new shipper review (''NSR'') of the antidumping duty order on frozen warmwater shrimp (''shrimp'') from the Socialist Republic of Vietnam (''Vietnam''), received on February 27, 2008, meets the statutory and regulatory requirements for initiation. The period of review (''POR'') for this NSR is February 1, 2007 January 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mark Manning or Howard Smith, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: 202–482–5253 and 202–482–5193, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

The notice announcing the antidumping duty order on shrimp from Vietnam was published in the **Federal Register** on February 1, 2005. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam*, 70 FR 5152 (February 1, 2005).[1] On February 27, 2008, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(c), the Department received a NSR request from BIM Seafood Joint Stock Company (''BIM Seafood''). BIM Seafood certified that it produces and exports the subject merchandise upon which the request was based.

On February 29, 2008, the Department issued BIM Seafood a letter requesting that it resubmit the public version of its February 27, 2008, request. *See* the Department's February 29, 2008, letter to BIM Seafood. On March 4, 2008, BIM Seafood submitted a proper public version, pursuant to 19 CFR 351.304(c)(1).

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), BIM Seafood certified that it did not export shrimp to the United States during the period of investigation (''POI''). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), BIM Seafood certified that, since the initiation of the investigation, it has never been affiliated with any Vietnamese exporter or producer who exported shrimp to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), BIM Seafood also certified that its export activities were not controlled by the central government of Vietnam.

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), BIM Seafood submitted documentation establishing the following: (1) the date on which BIM Seafood first shipped shrimp for export to the United States and the date on which the shrimp were first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.

The Department conducted United States Customs and Border Protection (''CBP'') database queries in an attempt to confirm that BIM Seafood's shipments of subject merchandise had entered the United States for consumption and that liquidation of such entries had been properly suspended for antidumping duties. The Department also examined whether the CBP data confirmed that such entries were made during the NSR POR. The information we examined was consistent with that provided by BIM Seafood.

**Initiation of New Shipper Reviews**

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), the Department finds that BIM Seafood meets the threshold requirements for initiation of a NSR for the shipment of shrimp from Vietnam it produced and exported. *See* ''Memorandum to File from Javier Barrientos, Senior Case Analyst, Certain Warmwater Shrimp from the Socialist Republic of Vietnam: Initiation of AD New Shipper Review for BIM Seafood Joint Stock Company,'' (March 26, 2008).

The Department intends to issue the preliminary results of this NSR no later than 180 days from the date of initiation, and final results no later than

[1] Therefore, a request for a NSR based on the annual anniversary month, February, was due to the Department by February 29, 2008. See 19 CFR 351.214(d)(1).

270 days from the date of initiation. *See* section 751(a)(2)(B)(iv) of the Act.

On August 17, 2006, the Pension Protection Act of 2006 (''H.R. 4'') was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct CBP to collect a bond or other security in lieu of a cash deposit in new shipper reviews. Therefore, the posting of a bond under section 751(a)(B)(iii) of the Act in lieu of a cash deposit is not available in this case. Importers of shrimp from Vietnam manufactured and/or exported by BIM Seafood must continue to post cash deposits of estimated antidumping duties on each entry of subject merchandise at the current Vietnam–wide rate of 25.76 percent.

Interested parties requiring access to proprietary information in this NSR should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306. This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: March 26, 2008.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E8–7084 Filed 4–3–08; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–931]**

### Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Amended Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigation

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** April 4, 2008.

**FOR FURTHER INFORMATION CONTACT:** Kristen Johnson, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4793.

**SUPPLEMENTARY INFORMATION:**

#### Background

On February 19, 2008, the Department of Commerce (Department) initiated the countervailing duty investigation of circular welded austenitic stainless pressure pipe from the People's Republic of China. *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Notice of Initiation of Countervailing Duty Investigation*, 73 FR 9994 (February 25, 2008). Currently, the preliminary determination is due no later than April 24, 2008.

The version of the notice of postponement of the preliminary determination released on Thursday, March 27, 2008, stated that the deadline for completion of the final determination is June 30, 2008. The notice should have stated that the deadline for completion of the preliminary determination is June 30, 2008. This amended notice corrects that error. This error was discovered prior to publication of the notice in the **Federal Register**, consequently, this amendment is being published in its place.

#### Postponement of Due Date for Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, if the Department concludes that the parties concerned in the investigation are cooperating and determines that the investigation is extraordinarily complicated, section 703(c)(1)(B) of the Act allows the Department to postpone making the preliminary determination until no later than 130 days after the date on which the administering authority initiated the investigation.

The Department is currently investigating alleged subsidy programs involving loans, grants, income tax incentives, and the provision of goods or services for less than adequate remuneration. Due to the number and complexity of the alleged countervailable subsidy practices being investigated, it is not practicable to complete the preliminary determination of this investigation within the original time limit (*i.e.*, by April 24, 2008). Therefore, in accordance with section 703(c)(1)(B) of the Act, we are fully extending the due date for the preliminary determination to no later than 130 days after the day on which the investigation was initiated. However, as that date falls on a Saturday, the deadline for completion of the preliminary determination is now June 30, 2008, the next business day.

This notice is issued and published pursuant to section 703(c)(2) of the Act.

Dated: April 1, 2008.

**Stephen J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E8–7100 Filed 4–3–08; 8:45 am]

BILLING CODE 3510–DR–S

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Manufacturing Extension Partnership Advisory Board

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Manufacturing Extension Partnership (MEP) Advisory Board, National Institute of Standards and Technology (NIST) will meet Sunday, April 27, 2008, from 1 p.m. to 5 p.m. This meeting is being held in conjunction with MEP's National Conference in Orlando, FL. The MEP Advisory Board is composed of 10 members appointed by the Director of NIST who were selected for their expertise in the area of industrial extension and their work on behalf of smaller manufacturers. The Board was established to fill a need for outside input on MEP. MEP is a unique program consisting of centers across the United States and Puerto Rico, with partnerships at the state, federal, and local levels. The Board works closely with MEP to provide input and advice on MEP's programs, plans, and policies. For this meeting, discussions will focus on MEP's current key initiatives and gaining insight into the future direction of manufacturing as part of MEP's strategic planning activities. The agenda may change to accommodate Board business.

**DATES:** The meeting will convene April 27, 2008 at 1 p.m. and will adjourn at 5 p.m. on April 27, 2008.

**ADDRESSES:** The meeting will be held at Orlando World Center Marriott Resort & Convention Center, 8701 World Center Drive, Orlando, Florida 32821. Anyone wishing to attend this meeting should submit name, e-mail address and phone number to Susan Hayduk (*susan.hayduk@nist.gov* or 301–975–5615) no later than April 17, 2008.

**FOR FURTHER INFORMATION CONTACT:** Karen Lellock, Manufacturing Extension Partnership, National Institute of Standards and Technology,

Gaithersburg, Maryland 20899–4800, telephone number (301) 975–4269.

Dated: March 31, 2008.

**Richard F. Kayser,**

*Acting Deputy Director.*

[FR Doc. E8–7052 Filed 4–3–08; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### National Fire Codes: Request for Comments on NFPA Technical Committee Reports

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice.

**SUMMARY:** Since 1896, the National Fire Protection Association (NFPA) has accomplished its mission by advocating scientifically based consensus codes and standards, research, and education for safety related issues. NFPA's *National Fire Codes®*, which holds over 270 documents, are administered by more than 225 Technical Committees comprised of approximately 7,000 volunteers and are adopted and used throughout the world. NFPA is a nonprofit membership organization with approximately 80,000 members from over 70 nations, all working together to fulfill the Association's mission.

The NFPA process provides ample opportunity for public participation in the development of its codes and standards. All NFPA codes and standards are revised and updated every three to five years in Revision Cycles that begin twice each year and that takes approximately two years to complete. Each Revision Cycle proceeds according to a published schedule that includes final dates for all major events in the process. The process contains five basic steps that are followed both for developing new documents as well as revising existing documents. These steps are: Calling for Proposals; Publishing the Proposals in the Report on Proposals (ROP); Calling for Comments on the Committee's disposition of the Proposals and these Comments are published in the Report on Comments (ROC); having a Technical Report Session at the NFPA Annual Meeting; and finally, the Standards Council Consideration and Issuance of documents.

**Note:** Under new rules effective Fall 2005, anyone wishing to make Amending Motions on the Technical Committee Reports (ROP and ROC) must signal their intention by submitting a Notice of Intent to Make a Motion by the Deadline of April 3, 2009. Certified motions will be posted by May 1, 2009. Documents that receive notice of proper Amending Motions (Certified Amending Motions) will be presented for action at the Annual 2009 Association Technical Meeting. Documents that receive no motions will be forwarded directly to the Standards Council for action on issuance at its August 6, 2009 meeting.

For more information on these new rules and for up-to-date information on schedules and deadlines for processing NFPA Documents, check the NFPA Web site at *www.nfpa.org* or contact NFPA Codes and Standards Administration.

The purpose of this notice is to request comments on the technical reports that will be presented at NFPA's 2009 Annual Revision Cycle. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

**DATES:** Twenty-seven reports are published in the 2009 Annual Cycle Report on Proposals and will be available on June 20, 2008. Comments received on or before August 29, 2008, will be considered by the respective NFPA Committees before final action is taken on the proposals.

**ADDRESSES:** The 2009 Annual Revision Cycle Report on Proposals is available and downloadable from NFPA's Web site—*www/nfpa.org* or by requesting a copy from the NFPA, Fulfillment Center, 11 Tracy Drive, Avon, Massachusetts 02322. Comments on the report should be submitted to Milosh Puchovsky, Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101.

**FOR FURTHER INFORMATION CONTACT:** Milosh Puchovsky, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101, (617) 770–3000.

**SUPPLEMENTARY INFORMATION:**

### Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

### Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Milosh Puchovsky, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101. Commenters may use the forms provided for comments in the Reports on Proposals. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before August 29, 2008, for the 2009 Annual Cycle Report on Proposals will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the 2009 Annual Cycle Report on Comments by February 20, 2009. A copy of the Report on Comments will be sent automatically to each commenter. Reports of the Technical Committees on documents that do not receive a Notice of Intent to Make a Motion will automatically be forwarded to the Standards Council for action on issuance. Action on the reports of the Technical Committees on documents that do receive a Notice of Intent to Make a Motion will be taken at the Annual Meeting, June 7–11, 2009, in Chicago, Illinois, by NFPA members.

2009 ANNUAL MEETING; REPORT ON PROPOSALS

[P = Partial revision; W = Withdrawal; R = Reconfirmation; N = New; C = Complete Revision]

| | | |
|---|---|---|
| NFPA 13 | Standard for the Installation of Sprinkler Systems | P |
| NFPA 13D | Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes | P |
| NFPA 13R | Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height. | P |
| NFPA 20 | Standard for the Installation of Stationary Pumps for Fire Protection | P |
| NFPA 24 | Standard for the Installation of Private Fire Service Mains and Their Appurtenances | P |
| NFPA 72 | National Fire Alarm Code® | P |

2009 ANNUAL MEETING; REPORT ON PROPOSALS—Continued

[P = Partial revision; W = Withdrawal; R = Reconfirmation; N = New; C = Complete Revision]

| | | |
|---|---|---|
| NFPA 80 | Standard for Fire Doors and Other Opening Protectives | P |
| NFPA 99 | Standard for Health Care Facilities | P |
| NFPA 99B | Standard for Hypobaric Facilities | P |
| NFPA 99C | Standard on Gas and Vacuum Systems | P |
| NFPA 101A | Guide on Alternative Approaches to Life Safety | P |
| NFPA 105 | Standard for the Installation of Smoke Door Assemblies and Other Opening Protectives | P |
| NFPA 110 | Standard for Emergency and Standby Power Systems | P |
| NFPA 111 | Standard on Stored Electrical Energy Emergency and Standby Power Systems | P |
| NFPA 130 | Standard for Fixed Guideway Transit and Passenger Rail Systems | P |
| NFPA 291 | Recommended Practice for Fire Flow Testing and Marking of Hydrants | P |
| NFPA 302 | Fire Protection Standard for Pleasure and Commercial Motor Craft | P |
| NFPA 400 | Hazardous Materials Code | N |
| NFPA 430 | Code for the Storage of Liquid and Solid Oxidizers | W |
| NFPA 432 | Code for the Storage of Organic Peroxide Formulations | W |
| NFPA 434 | Code for the Storage of Pesticides | W |
| NFPA 490 | Code for the Storage of Ammonium Nitrate | W |
| NFPA 1123 | Code for Fireworks Display | P |
| NFPA 1124 | Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles | P |
| NFPA 1221 | Standard for the Installation, Maintenance, and Use of Emergency Services Communications Systems | P |
| NFPA 1710 | Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments. | C |
| NFPA 1720 | Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations and Special Operations to the Public by Volunteer Fire Departments. | |

Dated: March 31, 2008.

**Richard F. Kayser,**

*Acting Deputy Director.*

[FR Doc. E8–7056 Filed 4–3–08; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### National Fire Codes: Request for Proposals for Revision of Codes and Standards

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice.

**SUMMARY:** The National Fire Protection Association (NFPA) proposes to revise some of its fire safety codes and standards and requests proposals from the public to amend existing or begin the process of developing new NFPA fire safety codes and standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its codes and standards. The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

The NFPA process provides ample opportunity for public participation in the development of its codes and standards. All NFPA codes and standards are revised and updated every three to five years in Revision Cycles that begin twice each year and that take approximately two years to complete. Each Revision Cycle proceeds according to a published schedule that includes final dates for all major events in the process. The process contains five basic steps that are followed both for developing new documents as well as revising existing documents. These steps are: Calling for Proposals; Publishing the Proposals in the Report on Proposals (ROP); Calling for Comments on the Committee's disposition of the proposals and these Comments are published in the Report on Comments (ROC); having a Technical Report Session at the NFPA Annual Meeting; and finally, the Standards Council Consideration and Issuance of documents.

**Note:** Under new rules effective Fall 2005, anyone wishing to make Amending Motions on the Technical Committee Reports (ROP and ROC) must signal their intention by submitting a Notice of Intent to Make a Motion by the Deadline stated in the ROC. Certified motions will then be posted on the NFPA website. Documents that receive notice of proper Amending Motions (Certified Amending Motions) will be presented for action at the Annual Association Technical Meeting. Documents that receive no motions will be forwarded directly to the Standards Council for action on issuance.

For more information on these new rules and for up-to-date information on schedules and deadlines for processing NFPA Documents, check the NFPA Web site at *http://www.nfpa.org* or contact NFPA Codes and Standards Administration.

**DATES:** Interested persons may submit proposals on or before the dates listed with the standards.

**ADDRESSES:** Milosh Puchovsky, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101.

**FOR FURTHER INFORMATION CONTACT:** Milosh Puchovsky, Secretary, Standards Council, at above address, (617) 770–3000.

**SUPPLEMENTARY INFORMATION:**

### Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

When a Technical Committee begins the development of a new or revised NFPA code or standard, it enters one of two Revision Cycles available each year. The Revision Cycle begins with the Call for Proposals, that is, a public notice asking for any interested persons to submit specific written proposals for developing or revising the Document. The Call for Proposals is published in a variety of publications. Interested parties have approximately twenty weeks to respond to the Call for Proposals.

Following the Call for Proposals period, the Technical Committee holds a meeting to consider and accept, reject

or revise, in whole or in part, all the submitted Proposals. The committee may also develop its own Proposals. A document known as the Report on Proposals, or ROP, is prepared containing all the Public Proposals, the Technical Committees' action and each Proposal, as well as all Committee-generated Proposals. The ROP is then submitted for the approval of the Technical Committee by a formal written ballot. If the ROP does not receive approval by a two-thirds vote calculated in accordance with NFPA rules, the Report is returned to the committee for further consideration and is not published. If the necessary approval is received, the ROP is published in a compilation of Reports on Proposals issued by NFPA twice yearly for public review and comment, and the process continues to the next step.

The Reports on Proposals are sent automatically free of charge to all who submitted proposals and each respective committee member, as well as anyone else who requests a copy. All ROP's are also available for free downloading at *www.nfpa.org.*

Once the ROP becomes available, there is a 60-day comment period during which anyone may submit a Public Comment on the proposed changes in the ROP. The committee then reconvenes at the end of the comment period and acts on all Comments.

As before, a two-thirds approval vote by written ballot of the eligible members of the committee is required for approval of actions on the Comments. All of this information is compiled into a second Report, called the Report on Comments (ROC), which, like the ROP, is published and made available for public review for a seven-week period.

The process of public input and review does not end with the publication of the ROP and ROC. Following the completion of the Proposal and Comment periods, there is yet a further opportunity for debate and discussion through the Technical Report Sessions that take place at the NFPA Annual Meeting.

The Technical Report Session provides an opportunity for the final Technical Committee Report (i.e., the ROP and ROC) on each proposed new or revised code or standard to be presented to the NFPA membership for the debate and consideration of motions to amend the Report. Before making an allowable motion at a Technical Report Session, the intended maker of the motion must file, in advance of the session, and within the published deadline, a Notice of Intent to Make a Motion. A Motions Committee appointed by the Standards Council then reviews all notices and certifies all amending motions that are proper. Only these Certified Amending Motions, together with certain allowable Follow-Up Motions (that is, motions that have become necessary as a result of previous successful amending motions) will be allowed at the Technical Report Session.

For more information on dates/locations of NFPA Technical Committee meetings and NFPA Annual Technical Report Sessions, check the NFPA Web site at *http://www.nfpa.org/itemDetail.asp?categoryID=822&itemID=22818.*

The specific rules for the types of motions that can be made and who can make them are set forth in NFPA's Regulation Governing Committee Projects which should always be consulted by those wishing to bring an issue before the membership at a Technical Report Session.

**Request for Proposals**

Interested persons may submit proposals, supported by written data, views, or arguments to Milosh Puchovsky, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101. Proposals should be submitted on forms available from the NFPA Codes and Standards Administration Office or on NFPA's Web site at *http://www.nfpa.org.*

Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5 p.m. local time on the closing date indicated would be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the code or standard.

| Document-edition | Document name | Proposal closing date |
|---|---|---|
| NFPA 2—P* | Hydrogen Technologies Code | 5/30/2008 |
| NFPA 10—2007 | Standard for Portable Fire Extinguishers | 5/30/2008 |
| NFPA 11—2005 | Standard for Low-, Medium-, and High-Expansion Foam | 5/30/2008 |
| NFPA 12—2008 | Standard on Carbon Dioxide Extinguishing Systems | 5/29/2009 |
| NFPA 13E—2005 | Recommended Practice for Fire Department Operations in Properties Protected by Sprinkler and Standpipe Systems. | 5/30/2008 |
| NFPA 14—2007 | Standard for the Installation of Standpipes and Hose Systems | 5/30/2008 |
| NFPA 18—2006 | Standard on Wetting Agents | 5/30/2008 |
| NFPA 25—2008 | Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems. | 5/30/2008 |
| NFPA 30—2008 | Flammable and Combustible Liquids Code | 12/1/2008 |
| NFPA 35—2005 | Standard for the Manufacture of Organic Coatings | 5/30/2008 |
| NFPA 37—2006 | Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines | 5/30/2008 |
| NFPA 45—2004 | Standard on Fire Protection for Laboratories Using Chemicals | 5/30/2008 |
| NFPA 53—2004 | Recommended Practice on Materials, Equipment, and Systems Used in Oxygen-Enriched Atmospheres. | 5/30/2008 |
| NFPA 70—2008 | National Electrical Code® | 11/7/2008 |
| NFPA 70B—2006 | Recommended Practice for Electrical Equipment Maintenance | 5/30/2008 |
| NFPA 91—2004 | Standard for Exhaust Systems for Air Conveying of Vapors, Gases, Mists, and Noncombustible Particulate Solids. | 5/30/2008 |
| NFPA 120—2004 | Standard for Fire Prevention and Control in Coal Mines | 5/30/2008 |
| NFPA 122—2004 | Standard for Fire Prevention and Control in Metal/Nonmetal Mining and Metal Mineral Processing Facilities. | 5/30/2008 |
| NFPA 204—2007 | Standard for Smoke and Heat Venting | 5/30/2008 |
| NFPA 211—2006 | Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances | 5/30/2008 |
| NFPA 214—2005 | Standard on Water-Cooling Towers | 5/30/2008 |
| NFPA 326—2005 | Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair | 5/30/2008 |

| Document-edition | Document name | Proposal closing date |
|---|---|---|
| NFPA 329—2005 | Recommended Practice for Handling Releases of Flammable and Combustible Liquids and Gases. | 5/30/2008 |
| NFPA 405—2004 | Standard for the Recurring Proficiency of Airport Fire Fighters | 5/30/2008 |
| NFPA 408—2004 | Standard for Aircraft Hand Portable Fire Extinguishers | 5/30/2008 |
| NFPA 409—2004 | Standard on Aircraft Hangars | 5/30/2008 |
| NFPA 410—2004 | Standard on Aircraft Maintenance | 5/30/2008 |
| NFPA 422—2004 | Guide for Aircraft Accident/Incident Response Assessment | 5/30/2008 |
| NFPA 423—2004 | Standard for Construction and Protection of Aircraft Engine Test Facilities | 5/30/2008 |
| NFPA 495—2006 | Explosive Materials Code | 5/30/2008 |
| NFPA 498—2006 | Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives | 5/30/2008 |
| NFPA 520—2005 | Standard on Subterranean Spaces | 5/30/2008 |
| NFPA 551—2007 | Guide for the Evaluation of Fire Risk Assessments | 5/30/2008 |
| NFPA 600—2005 | Standard on Industrial Fire Brigades | 5/30/2008 |
| NFPA 601—2005 | Standard for Security Services in Fire Loss Prevention | 5/30/2008 |
| NFPA 701—2004 | Standard Methods of Fire Tests for Flame Propagation of Textiles and Films | 5/30/2008 |
| NFPA 750—2006 | Standard on Water Mist Fire Protection Systems | 5/30/2008 |
| NFPA 804—2006 | Standard for Fire Protection for Advanced Light Water Reactor Electric Generating Plants | 5/30/2008 |
| NFPA 805—2006 | Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants. | 5/30/2008 |
| NFPA 806—P* | Performance Based Standard for Fire Protection for Advanced Nuclear Reactor Electric Generating Plants. | 5/30/2008 |
| NFPA 850—2005 | Recommended Practice for Fire Protection for Electric Generating Plants and High Voltage Direct Current Converter Stations. | 5/30/2008 |
| NFPA 851—2005 | Recommended Practice for Fire Protection for Hydroelectric Generating Plants | 5/30/2008 |
| NFPA 853—2007 | Standard for the Installation of Stationary Fuel Cell Power Systems | 5/30/2008 |
| NFPA 900—2007 | Building Energy Code | 5/30/2008 |
| NFPA 1003—2005 | Standard for Airport Fire Fighter Professional Qualifications | 5/30/2008 |
| NFPA 1035—2005 | Standard for Professional Qualifications for Public Fire and Life Safety Educator | 5/30/2008 |
| NFPA 1410—2005 | Standard on Training for Initial Emergency Scene Operations | 5/30/2008 |
| NFPA 1452—2005 | Guide for Training Fire Service Personnel to Conduct Dwelling Fire Safety Surveys | 5/30/2008 |
| NFPA 1600—2007 | Standard on Disaster/Emergency Management and Business Continuity Programs | 5/30/2008 |
| NFPA 1620—2003 | Recommended Practice for Pre-Incident Planning | 5/30/2008 |
| NFPA 1931—2004 | Standard for Manufacturer's Design of Fire Department Ground Ladders | 5/30/2008 |
| NFPA 1932—2004 | Standard on Use, Maintenance, and Service Testing of In-Service Fire Department Ground Ladders. | 5/30/2008 |
| NFPA 2001—2008 | Standard on Clean Agent Fire Extinguishing Systems | 5/29/2009 |

• Proposed NEW drafts are available from NFPA's Web site—*http://www.nfpa.org* or may be obtained from NFPA's Codes and Standards Administration, 1 Batterymarch Park, Quincy, Massachusetts 02269.

Dated: March 31, 2008.

**Richard F. Kayser,**

*Acting Deputy Director.*

[FR Doc. E8–7054 Filed 4–3–08; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XG72**

### Marine Mammals; File No. 10095

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

**ACTION:** Notice; issuance of permit.

**SUMMARY:** Notice is hereby given that the North Carolina Zoological Park, 4401 Zoo Parkway, Asheboro, NC 27205, has been issued a permit to import two juvenile harbor seals (*Phoca vitulina*) for the purposes of public display.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Skidmore or Kate Swails, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** On December 21, 2007, notice was published in the **Federal Register** (72 FR 72674) that a request for a public display permit to import two male captive-born juvenile harbor seals (*Phoca vitulina*) from the New Brunswick Aquarium and Marine Center, Shippagan, New Brunswick, Canada to the North Carolina Zoological Park, had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: March 31, 2008.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E8–7022 Filed 4–3–08; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF80**

### Marine Mammals; File No. 10084

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

**ACTION:** Notice; issuance of permit.

**SUMMARY:** Notice is hereby given that Sea World, Inc., 7007 Sea World Drive, Orlando, FL 32821 [Brad Andrews, Responsible Party] has been issued a permit to import one beluga whale (*Delphinapterus leucas*) for public display.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Skidmore or Kate Swails, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** On December 3, 2007, notice was published in the **Federal Register** (72 FR 67915) that a request for a public display permit to import one female juvenile beluga whale from Marineland of Canada in Ontario, Canada to Sea World of Florida in Orlando, Florida, had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Dated: March 27, 2008.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E8–7023 Filed 4–3–08; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648–XG48**

### Fisheries of the South Atlantic; Southeastern Data, Assessment, and Review (SEDAR); Public Meetings.

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

**ACTION:** Notice of SEDAR Workshops for South Atlantic Spanish mackerel and vermilion snapper.

**SUMMARY:** The SEDAR assessments of the South Atlantic stocks of Spanish mackerel and vermilion snapper will consist of a series of three workshops: a Data Workshop, an Assessment Workshop, and a Review Workshop. This is the seventeenth SEDAR. See **SUPPLEMENTARY INFORMATION**.

**DATES:** The Data Workshop will take place May 19–23, 2008; the Assessment Workshop will take place August 25–29, 2008; the Review Workshop will take place October 20–24, 2008. See **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The Data Workshop will be held at the Doubletree Guest Suites - Charleston Historic District, 181 Church Street, Charleston, SC 29401; telephone: (843) 577–2644. The Assessment Workshop will be held at the Center for Coastal Fisheries and Habitat Research Beaufort Laboratory, 101 Piver's Island Road, Beaufort, NC 28516; telephone: (252) 728–3595. The Review Workshop will be held at the Hampton Inn and Suites, Savannah Historic District, 201 Martin Luther King Boulevard, Savannah, GA 31401; telephone: (912) 721–1600.

*Council address*: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Dale Theiling, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366.

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR includes three workshops: (1) Data Workshop, (2) Stock Assessment Workshop and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Stock Assessment Workshop is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Consensus Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

**SEDAR 17 Workshop Schedule:**

**May 19–23, 2008; SEDAR 17 Data Workshop**

*May 19, 2008: 1 p.m. - 8 p.m.; May 20–22, 2008: 8 a.m. - 8 p.m.; May 23, 2008: 8 a.m. - 1 p.m.*

An assessment data set and associated documentation will be developed during the Data Workshop. Participants will evaluate all available data and select appropriate sources for providing information on life history characteristics, catch statistics, discard estimates, length and age composition, and fishery dependent and fishery independent measures of stock abundance.

**August 25–29, 2008; SEDAR 17 Assessment Workshop**

*August 25, 2008: 1 p.m. - 8 p.m.; August 26–28, 2008: 8 a.m. - 8 p.m.; August 29, 2008: 8 a.m. - 1 p.m.*

Using datasets provided by the Data Workshop, participants will develop population models to evaluate stock status, estimate population benchmarks and Sustainable Fisheries Act criteria, and project future conditions. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters. Participants will prepare a workshop report, compare and contrast various assessment approaches, and determine whether the assessments are adequate for submission to the review panel.

**October 20–24, 2008; SEDAR 17 Review Workshop**

*October 20, 2008: 1 p.m. - 8 p.m.; October 21–23, 2008: 8 a.m. - 8 p.m.; October 24, 2008: 8 a.m. - 1 p.m.*

The Review Workshop is an independent peer review of the assessment developed during the Data and Assessment Workshops. Workshop Panelists will review the assessment and document their comments and recommendations in a Consensus Summary.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Dated: April 1, 2008.

**Tracey L. Thompson,**

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

[FR Doc. E8–6980 Filed 4–3–08; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648–XG89**

### Fisheries of the South Atlantic, Gulf of Mexico, and Caribbean; Southeastern Data, Assessment, and Review (SEDAR); Public Meeting

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

**ACTION:** Notice of the SEDAR Steering Committee meeting.

**SUMMARY:** The SEDAR Steering Committee will meet to discuss the SEDAR schedule through 2014, consider modifications to the SEDAR process, and receive updates on recent assessment activities. See **SUPPLEMENTARY INFORMATION**.

**DATES:** The SEDAR Steering Committee will meet on Monday, May 5, 2008, from 9 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at the Marriott Frenchmen's Reef, 5 Estate Bakkeroe, St. Thomas, USVI; telephone: (340) 776–8500.

*Council address*: South Atlantic Fishery Management Council, 4055 Faber Place, Suite 201, North Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** John Carmichael, Science and Statistics Program Manager, SEDAR/SAFMC; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520.

**SUPPLEMENTARY INFORMATION:** The South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils; in conjunction with NOAA Fisheries, the Atlantic States Marine Fisheries Commission, and the Gulf States Marine Fisheries Commission; implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks. The SEDAR Steering Committee provides oversight of the SEDAR process, establishes assessment priorities, and provides coordination between assessment efforts and management activities. The SEDAR Steering Committee meets twice annually.

During this meeting, the Steering Committee will consider scheduling benchmark assessments during 2009–14 and update assessments in 2009 and 2010. The Committee will also review recent activities, receive a progress report on staffing levels, and review the SEDAR guidelines.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 3 weeks prior to the meeting.

Dated: April 1, 2008.

**Tracey L. Thompson,**

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

[FR Doc. E8–6981 Filed 4–3–08; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648–XE92**

### Fisheries of the South Atlantic and Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); king mackerel; Public Meeting; Correction

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

**ACTION:** Notice of change of location for SEDAR Assessment Workshop for South Atlantic and Gulf of Mexico king mackerel.

**SUMMARY:** The SEDAR assessments of the South Atlantic and Gulf of Mexico stocks of king mackerel will consist of a series of three workshops: a Data Workshop, an Assessment Workshop, and a Review Workshop. This is the sixteenth SEDAR. See **SUPPLEMENTARY INFORMATION**.

**DATES:** The Assessment Workshop will take place May 5–9, 2008. See **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The Assessment Workshop will be held at the Doubletree Hotel Coconut Grove, 2649 S. Bayshore Drive, Miami, FL 33133; telephone: (305) 858–2500.

**FOR FURTHER INFORMATION CONTACT:** Julie Neer, SEDAR Coordinator, 4055 Faber

Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366.

**SUPPLEMENTARY INFORMATION:** The original notice published in the **Federal Register** on January 14, 2008 (73 FR 2223). The original noticed stated that the Assessment Workshop would be held at the Grand Bay Hotel. The location of that meeting has changed to the address listed above (see **ADDRESSES**).

**May 5–9, 2008; SEDAR 16 Assessment Workshop**

*May 5, 2008: 1 p.m. - 8 p.m.; May 6–8, 2008: 8 a.m - 8 p.m.; May 9, 2008: 8 a.m. - 1 p.m.*

All other previously-published information remains unchanged.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Dated: April 1, 2008.

**Tracey L. Thompson,**

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

[FR Doc. E8–6982 Filed 4–3–08; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648–XG55**

### Fisheries of the South Atlantic and Gulf of Mexico; South Atlantic Fishery Management Council (SAFMC); Public Meeting; Correction

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

**ACTION:** Notice of change of location for the SAFMC Scientific and Statistical Committee (SSC) meeting.

**SUMMARY:** The meeting scheduled for April 29–30, 2008 will be held at the Hilton Garden Inn, 5265 International Boulevard, North Charleston, SC 29418, not at 4055 Faber Place Drive as originally scheduled. The SAFMC will hold a meeting of its SSC to orient new members and introduce them to the Council system. See **SUPPLEMENTARY INFORMATION**.

**DATES:** The SSC meeting will be held April 29–30, 2008.

**ADDRESSES:** The SSC meeting will be held at the Hilton Garden Inn, 5265 International Boulevard, North Charleston, SC 29418, telephone: (843) 308–9330.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; e-mail: *Kim.Iverson@safmc.net*.

**SUPPLEMENTARY INFORMATION:** The original noticed published in the **Federal Register** on March 24, 2008 (73 FR 15488).

Under the Magnuson-Stevens Act, the SSC is the body responsible for reviewing the Council's scientific materials. The South Atlantic Fishery Management Council will hold a meeting of its SSC to provide orientation for new members appointed in March 2008. Members will be briefed on SAFMC operating procedures and administrative issues, and discuss the tasks and responsibilities of SSC membership.

**SSC Meeting Schedule:**

*April 29, 2008, 1 p.m. - 5 p.m., April 30, 2008, 9 a.m. - 1 p.m.*

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Dated: April 1, 2008.

**Tracey L. Thompson,**

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

[FR Doc. E8–6983 Filed 4–3–08; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648–XG88**

### Gulf of Mexico Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will convene a public meeting of the Ad Hoc Grouper Individual Fishing Quota (IFQ) Advisory Panel (AHGIFQAP).

**DATES:** The AHGIFQAP meeting will convene at 9 a.m. on Thursday, April 24, 2008 and conclude no later than 5 p.m.

**ADDRESSES:** The meeting will be held at the Quorum Hotel, 700 N. Westshore Blvd., Tampa, FL 33609; telephone: (813) 289–8200.

*Council address*: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

**FOR FURTHER INFORMATION CONTACT:** Assane Diagne, Economist, telephone: (813) 348–1630.

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico Fishery Management Council (Council) has scheduled a meeting of the Ad Hoc Grouper IFQ Advisory Panel to discuss the public hearing draft for Amendment 29 to the Reef Fish Fishery Management Plan. Reef Fish Amendment 29 proposes to rationalize effort and reduce overcapacity in the commercial grouper and tilefish fisheries in order to achieve and maintain optimum yield (OY). Effort management approaches considered in this amendment include permit endorsements and the implementation of an Individual Fishing Quota (IFQ) program.

Although other non-emergency issues not on the agenda may come before the AHGIFQAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the AHGIFQAP will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling (813) 348–1630.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: March 31, 2008.

**Tracey L. Thompson,**

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

[FR Doc. E8–6962 Filed 4–3–08; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### Substantive Submissions Made During Prosecution of the Trademark Application

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the extension of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before June 3, 2008.

**ADDRESSES:** You may submit comments by any of the following methods:

- *E-mail*: *Susan.Fawcett@uspto.gov.* Include ''0651–0054 comment'' 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, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal e-Rulemaking Portal: http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to the attention of Janis Long, Attorney Advisor, Office of the Commissioner for Trademarks, United States Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313–1451, by telephone at 571–272–9573, or by e-mail at *Janis.Long@uspto.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The United States Patent and Trademark Office (USPTO) administers the Trademark Act, 15 U.S.C. 1051 *et seq.*, which provides for the Federal registration of trademarks, service marks, collective trademarks and service marks, collective membership marks, and certification marks. Individuals and businesses that use or intend to use such marks in commerce may file an application to register their marks with the USPTO.

Such individuals and businesses may also submit various communications to the USPTO, including requests to amend their registrations to delete goods or services that are no longer being used by the registrant. Registered marks remain on the register for ten years and can be renewed, but will be cancelled unless the owner files with the USPTO a declaration attesting to the continued use (or excusable non-use) of the mark in commerce within specific deadlines. Applicants may also surrender a registration and, in limited situations, petition the Director to reinstate a registration that has been cancelled.

The rules implementing the Act are set forth in 37 CFR part 2. These rules mandate that each register entry include the mark, the goods and/or services in connection with which the mark is used, ownership information, dates of use, and certain other information. The USPTO also provides similar information concerning pending applications. The register and pending application information may be accessed by an individual or by businesses to determine the availability of a mark. By accessing the USPTO's information, parties may reduce the possibility of initiating use of a mark previously adopted by another. The Federal trademark registration process may thereby lessen the filing of papers in court and between parties.

### II. Method of Collection

Electronically if applicants submit the information using the forms available through the Trademark Electronic Application System (TEAS). By mail or hand delivery if applicants choose to submit the information in paper form.

### III. Data

*OMB Number:* 0651–0054.

*Form Number(s):* PTO Forms 1553, 1581, 2194, 2195, 2200, and 2202.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Primarily business or other for-profit organizations.

*Estimated Number of Respondents:* 228,115 per year.

*Estimated Time per Response:* The USPTO estimates that it will take approximately 3 minutes (0.05 hours) to 20 minutes (0.33 hours) to complete this information. This includes the time to gather the necessary information, create the documents, and submit the completed request to the USPTO.

*Estimated Total Annual Respondent Burden Hours:* 34,684 hours.

*Estimated Total Annual Respondent Cost Burden:* $10,543,936. The USPTO believes that associate attorneys will complete this information. The professional hourly rate for associate attorneys in private firms is $304. Using this hourly rate, the USPTO estimates that the total respondent cost burden for this collection is $10,543,936 per year.

| Item | Estimated time for response (in minutes) | Estimated annual responses | Estimated annual burden hours |
|---|---|---|---|
| Trademark/Service Mark Allegation of Use (Statement of Use/Amendment to Allege Use) | 13 | 10,475 | 2,305 |
| TEAS Trademark/Service Mark Allegation of Use (Statement of Use/Amendment to Allege Use) | 11 | 54,992 | 9,899 |
| Request for Extension of Time to File a Statement of Use | 10 | 10,211 | 1,736 |
| TEAS Request for Extension of Time to File a Statement of Use | 9 | 117,429 | 17,614 |
| Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action | 12 | 2,004 | 401 |
| TEAS Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action | 5 | 8,015 | 641 |
| Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request | 12 | 2,004 | 401 |
| TEAS Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request | 5 | 8,015 | 641 |
| Request to Delete Section 1(/B) Basis, Intent to Use | 4 | 194 | 14 |
| TEAS Request to Delete Section 1(b) Basis, Intent to Use | 3 | 1,100 | 55 |
| Request for Express Abandonment (Withdrawal) of Application | 4 | 4,686 | 328 |
| TEAS Request for Express Abandonment (Withdrawal) of Application | 3 | 6,500 | 325 |
| Request to Divide | 5 | 1,990 | 159 |
| Other Petitions | 30 | 500 | 165 |
| Totals | | 228,115 | 34,684 |

*Estimated Total Annual Non-Hour Respondent Cost Burden (includes postage costs and filing fees):* $27,958,968. This collection has no operating or maintenance costs.

Applicants incur postage costs when submitting non-electronic information to the USPTO by mail through the United States Postal Service. The USPTO estimates that the majority of the paper forms are submitted to the USPTO via first class mail. First class postage will increase to 42 cents effective May 12, 2008. Therefore, the USPTO estimates that the postage costs for this collection will be $13,468.

| Item | Responses (yr) (a) | Postage costs (b) | Total cost (yr) (a × b) |
|---|---|---|---|
| Trademark/Service Mark Allegation of Use (Statement of Use/Amendment to Allege Use) | 10,475 | $0.42 | $4,400 |
| Request for Extension of Time to File a Statement of Use | 10,211 | 0.42 | 4,289 |
| Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action | 2,004 | 0.42 | 842 |
| Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request | 2,004 | 0.42 | 842 |
| Request to Delete Section 1(b) Basis, Intent to Use | 194 | 0.42 | 81 |
| Request for Express Abandonment (Withdrawal) of Application | 4,686 | 0.42 | 1,968 |
| Request to Divide | 1,990 | 0.42 | 836 |
| Other Petitions | 500 | 0.42 | 210 |
| Totals | 32,064 | | 13,468 |

Filing fees are based on per class filing of goods and services; therefore, the total filing fees can vary depending on the number of classes. The total filing fees of $27,945,500 shown here are the minimum fees associated with this information collection.

| Item | Responses (yr) (a) | Filing fees (b) | Total cost (yr) (a × b) |
|---|---|---|---|
| Trademark/Service Mark Allegation of Use (Statement of Use/Amendment to Allege Use) | 10,475 | $100.00 | $1,047,500 |
| TEAS Trademark/Service Mark Allegation of Use (Statement of Use/Amendment to Allege Use) | 54,992 | 100.00 | 5,499,200 |
| Request for Extension of Time to File a Statement of Use | 10,211 | 150.00 | 1,531,650 |
| TEAS Request for Extension of Time to File a Statement of Use | 117,429 | 150.00 | 17,614,350 |
| Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action | 2,004 | 100.00 | 200,400 |
| TEAS Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action | 8,015 | 100.00 | 801,500 |
| Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request | 2,004 | 100.00 | 200,400 |
| TEAS Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request | 8,015 | 100.00 | 801,500 |
| Request to Delete Section 1(b) Basis, Intent to Use | 194 | 0.00 | 0 |
| TEAS Request to Delete Section 1(b) Basis, Intent to Use | 1,100 | 0.00 | 0 |
| Request for Express Abandonment (Withdrawal) of Application | 4,686 | 0.00 | 0 |
| TEAS Request for Express Abandonment (Withdrawal) of Application | 6,500 | 0.00 | 0 |
| Request to Divide | 1,990 | 100.00 | 199,000 |
| Other Petitions | 500 | 100.00 | 50,000 |
| Totals | 228,115 | | 27,945,500 |

* Note: All filing fees are based on per class filing.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: March 27, 2008.

**Susan K. Fawcett,**

*Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.*

[FR Doc. E8–7019 Filed 4–3–08; 8:45 am]

BILLING CODE 3510–16–P

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Renewal of a Currently Approved Information Collection

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with

the Paperwork Reduction Act of 1995 (Pub. L. 104–13), (44 U.S.C. Chapter 35). A copy of the ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Brooke Nicholas, 202–606–6627. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday.

**ADDRESSES:** Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by e-mail to: Katherine_T._Astrich@omb.eop.gov.*

*Comments:* A 60-day public comment Notice was published in the **Federal Register** on January 24, 2008. The comment period for this notice has closed and no comments were received.

**SUPPLEMENTARY INFORMATION:**

*Description:* In partnership with the Points of Light Foundation/Hands On Network, the Corporation for National and Community hosts an annual conference on volunteering. The conference encourages the volunteering community to share information and practices, learn new skills and establish relationships. Attendees include leaders from: nonprofits and civic infrastructures, academic institutions, businesses and government agencies.

As a part of learning the extent in which we reached these objectives, we would like to collect outcome data that reveals: How well the conference compares with past conferences; what improvements have been made; and what are some suggestions for the future.

We are particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

*Type of Review:* New.

*Agency:* Corporation for National and Community Service.

*Title:* National Conference Surveys.

*OMB Number:* NA.

*Frequency:* Annual.

*Affected Public:* Individuals and households, community and faith-based organizations, non-profits, state and local government and education institutions and businesses.

*Number of Respondents:* 5,000.

*Estimated Time Per Respondent:* Fifteen minutes per survey, for four or more surveys, including a follow-up survey for a sample of participants.

*Total Burden Hours:* 5,000 hours.

*Total Burden Cost (capital/startup):* None.

*Total Annual Cost (operating/maintaining systems or purchasing services):* None.

Dated: March 31, 2008.

**LaMonica Shelton,**

*Associate Director, Department of Research and Policy Development.*

[FR Doc. E8–7061 Filed 4–3–08; 8:45 am]

**BILLING CODE 6050–$$–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0066]**

## Federal Acquisition Regulation; Information Collection; Professional Employee Compensation Plan

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0066).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning the Professional Employee Compensation Plan. The clearance expired on July 31, 2007.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before June 3, 2008.

**ADDRESSES:** Submit comments including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0066, Professional Employee Compensation Plan, in all correspondence.

**FOR FURTHER INFORMATION CONTACT** Mr. Ernest Woodson, Contract Policy Division, GSA (202) 501–3775.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

FAR 22.1103 requires that all professional employees shall be compensated fairly and properly. Accordingly, a total compensation plan setting forth proposed salaries and fringe benefits for professional employees with supporting data must be submitted to the contracting officer for evaluation.

### B. Annual Reporting Burden

*Respondents:* 8,670.

*Responses Per Respondent:* 1.

*Total Responses:* 8,670.

*Hours Per Response:* .5.

*Total Burden Hours:* 4,335.

*Obtaining Copies Of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VPR), Room 4035, 1800 F Street, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0066, Professional Employee Compensation Plan, in all correspondence.

Dated: March 31, 2008.

**Al Matera,**

*Director, Office of Acquisition Policy.*

[FR Doc. E8–7051 Filed 4–3–08; 8:45 am]

**BILLING CODE 6820–EP–S**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Public Hearings for the Draft Environmental Impact Statement/ Overseas Environmental Impact Statement for the Southern California Range Complex (Including the San Clemente Island Range Complex)

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 and the regulations implemented by the Council on Environmental Quality (40 CFR Parts 1500–1508), and Presidential Executive Order 12114, the Department of the Navy (Navy) prepared and filed with the U.S. Environmental Protection Agency on March 28, 2008, a Draft Environmental Impact Statement/ Overseas Environmental Impact Statement (EIS/OEIS) for the Southern California Range Complex (including the San Clemente Island Range Complex). This Draft EIS/OEIS evaluates the potential environmental effects of current and emerging training and research, development, test, and evaluation (RDT&E) activities in the Southern California (SOCAL) Range Complex, and proposed upgrades and modernization of range complex capabilities for Navy training and testing. A Notice of Intent for this Draft EIS/OEIS was published in the **Federal Register** on December 21, 2006 (71 FR 76639).

The Navy will conduct three public hearings to receive oral and written comments on the Draft EIS/OEIS. Federal, State, and local agencies and interested individuals are invited to be present or represented at the public hearings. This notice announces the dates and locations for the public hearings for the Draft EIS/OEIS.

**DATES AND ADDRESSES:** An open house session will precede the public hearing at each of the locations listed below. Individuals will be allowed to review the information presented in the Draft EIS/OEIS and Navy representatives will be available during the open house sessions to clarify information related to the Draft EIS/OEIS. For all meetings, the open house will be held from 5 p.m. to 9:30 p.m., and the public hearing will be held from 7 p.m. to 9:30 p.m.

*Public hearings will be held on the following dates and at the following locations in California:*

1. April 29, 2008 at the Oceanside Civic Center Public Library, 330 North Coast Highway, Oceanside, California;

2. April 30, 2008 at the Coronado Community Center, 1845 Strand Way, Coronado, California;

3. May 1, 2008 at the Long Beach Public Library, 101 Pacific Avenue, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Naval Facilities Engineering Command Southwest, Attention: SOCAL EIS Project Manager (Code REVPO), 1220 Pacific Highway, Building 127, San Diego, California 92132–5190; phone 619–532–2803; or *http://www.socalrangecomplexeis.com.*

**SUPPLEMENTARY INFORMATION:** The mission of the SOCAL Range Complex is to serve as the principal U.S. Navy training venue in the eastern Pacific with the unique capability and capacity to support required current, emerging, and future training. As a result, the Navy proposes to implement actions within the SOCAL Range Complex to: increase training and research, development, test, and evaluation (RDT&E) operations from current levels as necessary to support the Fleet Readiness Training Plan (FRTP); accommodate mission requirements associated with force structure changes and introduction of new weapons and systems to the Fleet; and implement enhanced range complex capabilities.

The purpose of the Proposed Action is to achieve and maintain fleet readiness using the SOCAL Range Complex, while enhancing training resources through investment on the ranges. The need for the Proposed Action is to enable the Navy to meet its statutory responsibility (found in Title 10 of the United States Code, section 5062) to organize, train, equip, and maintain combat-ready naval forces and to successfully fulfill its current and future global mission of winning wars, deterring aggression, and maintaining freedom of the seas. The existing SOCAL Range Complex plays a vital part in the execution of this naval readiness mandate and has done so successfully for the last 70 years. The San Diego, California, region is home to the largest concentration of U.S. naval forces in the world, and the SOCAL Range Complex is the most capable and heavily used Navy range complex in the eastern Pacific region. The Navy's Proposed Action is a step toward ensuring the continued vitality of this essential naval training resource.

*The SOCAL Range Complex consists of three primary components:* ocean operating areas, military special use airspace, and San Clemente Island (SCI). The range complex is situated between Dana Point and San Diego along the California coast, and extends more than 600 nautical miles (nm) southwest into the Pacific Ocean. The SOCAL Range Complex encompasses 120,000 square nm of sea space, 113,000 square nm of designated airspace, and over 42 square nm of land area (SCI). The Navy proposes to maintain the existing established boundaries of the range complex's ocean areas and designated airspace.

Three alternatives are evaluated in this Draft EIS/OEIS, including two action alternatives (Alternatives 1 and 2) and the No-action Alternative. The No-action Alternative stands as no change from current levels of training and RDT&E usage. Alternatives 1 and 2 analyze increased tempo and frequency of training in the SOCAL Range Complex.

Alternative 1 and Alternative 2 also address proposed new types of training, as well as training associated with new types of ships, weapons, and systems that are being introduced into the Navy's fleet (e.g., The Littoral Combat Ship). Force structure changes associated with new weapons systems would include new mine countermeasures systems and also would include training and operations associated with the proposed homeporting of the aircraft carrier USS CARL VINSON at Naval Base Coronado. In addition, Alternative 2 addresses the proposed construction and use of a shallow water training range (SWTR) and shallow water minefield, as well as an increase in use of commercial air services to support training events. Alternative 2 is the Navy's preferred alternative.

The Draft EIS/OEIS has been distributed to various Federal, State, and local agencies, as well as other interested individuals and organizations. In addition, copies of the Draft EIS/OEIS are available for public review at the following libraries: San Diego Central Library, 820 ''E'' Street, San Diego, California; Oceanside Civic Center Public Library, 330 North Coast Highway, Oceanside, California; San Clemente Public Library, 242 Avenida Del Mar, San Clemente, California; San Pedro Regional Library, 931 South Gaffey Street, San Pedro, California; and Long Beach Public Library, 101 Pacific Avenue, Long Beach, California. Single copies of the Draft EIS/OEIS are

available upon written request to: SOCAL EIS, SOCAL EIS Project Manager (Code REVPO), 1220 Pacific Highway, Building 127, San Diego, California 92132–5190. In addition, an electronic copy of the Draft EIS/OEIS is also available for public viewing or download at *http://www.socalrangecomplexeis.com.* The Web site also contains information about the SOCAL Range Complex and a form for submission of electronic comments.

Federal, State, and local agencies and interested parties are invited to be present or represented at the public hearings. Written comments can be submitted during the public hearings. Oral statements will be heard and transcribed by a stenographer; however, to ensure the accuracy of the record, all oral statements should be submitted in writing. All statements, both oral and written, will become part of the public record on the Draft EIS/OEIS and will be addressed in the Final EIS/OEIS. Equal weight will be given to both oral and written statements.

In the interest of available time, and to ensure that all who wish to give an oral statement have the opportunity to do so, each speaker's comments will be limited to three (3) minutes. If a long statement is to be presented, it should be summarized at the public hearing and the full text submitted in writing either at the hearing, via the project Web site, or mailed to Naval Facilities Engineering Command Southwest, Attention SOCAL EIS Project Manager (Code REVPO), 1220 Pacific Highway, Building 127, San Diego, California, 92132–5190.

All written comments must be post-marked or received by May 19, 2008, to ensure they become part of the official record. The project Web site, *http://www.socalrangecomplexeis.com,* provides a form for submission of electronic comments. All timely comments will be addressed in the Final EIS/OEIS.

Dated: March 27, 2008.

**T.M. Cruz,**

*Lieutenant, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. E8–7085 Filed 4–3–08; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Closed Meeting of the Secretary of the Navy Advisory Panel

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** The Secretary of the Navy Advisory Panel will report on the findings and recommendations for Department of the Navy intelligence and information related strategies, activities, processes, organization, and governance.

**DATES:** The meeting will be held on April 24th and April 25th 2008 from 8 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held in the Secretary of the Navy's Conference Room in the Pentagon and the Pentagon Joint Staff Conference Center.

**FOR FURTHER INFORMATION CONTACT:** Colonel Caroline Simkins-Mullins, SECNAV Advisory Panel, Office of Program and Process Assessment 1000 Navy Pentagon, Washington, DC 20350, telephone: 703–697–9154.

**SUPPLEMENTARY INFORMATION:** Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Individuals or interested groups may submit written statements for consideration by the Secretary of the Navy Advisory Panel at any time or in response to the agenda of a scheduled meeting. All requests must be submitted to the Designated Federal Officer at the address detailed below.

If the written statement is in response to the agenda mentioned in this meeting notice then the statement, if it is to be considered by the Panel for this meeting, must be received at least five days prior to the meeting in question.

The Designated Federal Officer will review all timely submissions with the Secretary of the Navy Advisory Panel Chairperson, and ensure they are provided to members of the Secretary of the Navy Advisory Panel before the meeting that is the subject of this notice.

To contact the Designated Federal Officer, write to: Designated Federal Officer, SECNAV Advisory Panel, Office of Program and Process Assessment 1000 Navy Pentagon, Washington, DC 20350; telephone: 703–697–9154.

Dated: March 31, 2008.

**T.M. Cruz,**

*Lieutenant, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. E8–6967 Filed 4–3–08; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

March 28, 2008.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER05–18–004; ER05–309–004.

*Applicants:* New Dominion Energy Cooperative; Old Dominion Electric Cooperative, Inc.

*Description:* New Dominion Energy Cooperative *et al.* submits the appended attachments to serve as the Compliance Filing required by the Order.

*Filed Date:* 03/26/2008.

*Accession Number:* 20080327–0129.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, April 16, 2008.

*Docket Numbers:* ER07–1372–004.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator Inc submits clarifications and revisions to the Open Access Transmission, Energy and Operating Reserve Markets Tariff.

*Filed Date:* 03/26/2008.

*Accession Number:* 20080327–0153.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, April 16, 2008.

*Docket Numbers:* ER08–415–001.

*Applicants:* Potomac Electric Power Company.

*Description:* Potomac Electric Power Company submits their compliance filing with the required modifications to the Construction Agreement with Mirant Mid-Atlantic LLC.

*Filed Date:* 03/25/2008.

*Accession Number:* 20080327–0050.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, April 15, 2008.

*Docket Numbers:* ER08–416–001.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator Inc submits proposed revisions to both its current Open Access Transmission and Energy Markets Tariff and its Open Access Transmission Energy and Operating Reserve Markets Tariff.

*Filed Date:* 03/25/2008.

*Accession Number:* 20080327–0040.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, April 15, 2008.

*Docket Numbers:* ER08–685–000.

*Applicants:* TransCanada Maine Wind Development Inc.

*Description:* TransCanada Maine Wind Development, Inc submits an application for authorization to make wholesale sales of energy & capacity at negotiated market-based rates under ER08–685.

*Filed Date:* 03/17/2008.

*Accession Number:* 20080320–0032.

*Comment Date:* 5 p.m. Eastern Time on Monday, April 07, 2008.

*Docket Numbers:* ER08–703–000.

*Applicants:* Nevada Power Company.

*Description:* Nevada Power Co submits an unexecuted Large Generator Interconnection Agreement with Toquop Energy, LLC.

*Filed Date:* 03/25/2008.

*Accession Number:* 20080327–0028.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, April 15, 2008.

*Docket Numbers:* ER08–704–000.

*Applicants:* ISO New England Inc.

*Description:* ISO New England Inc *et al.* submit amendments to the ISO Financial Assurance Policy for Market Participants and ISO Financial Assurance for FTR Only Customers *et al.*

*Filed Date:* 03/25/2008.

*Accession Number:* 20080327–0049.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, April 15, 2008.

*Docket Numbers:* ER08–705–000.

*Applicants:* ISO New England Inc.

*Description:* ISO New England Inc *et al.* submits Market Rule and Billing Policy Revisions re UCAP Peak Contribution Values and Other Changes.

*Filed Date:* 03/25/2008.

*Accession Number:* 20080327–0048.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, April 15, 2008.

*Docket Numbers:* ER08–706–000; ER08–707–000; ER08–708–000; ER08–709–000; ER08–710–000; ER08–711–000.

*Applicants:* Avista Corporation; Idaho Power Company; PacifiCorp; Portland General Electric Company; Puget Sound Energy, Inc.; Northwestern Corporation (Montana).

*Description:* Pacific Northwest Investor-Owned Utilities submits revised Sections 30.1 and 30.03 to their Open Access Transmission Tariffs.

*Filed Date:* 03/25/2008.

*Accession Number:* 20080327–0047.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, April 15, 2008.

*Docket Numbers:* ER08–712–000.

*Applicants:* American Electric Power Service Corporation.

*Description:* American Electric Power Service Corp on behalf of Ohio Power Co *et al.* submits the Twelfth Revised Interconnection and Local Delivery Service Agreement with Buckeye Power, Inc.

*Filed Date:* 03/26/2008.

*Accession Number:* 20080327–0046.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, April 16, 2008.

*Docket Numbers:* ER08–713–000.

*Applicants:* The American Electric Power Service Corporation.

*Description:* American Electric Power Service Corp on behalf of American Electric Power Co, Inc submits a Notice of Cancellation of Service Agreements.

*Filed Date:* 03/26/2008.

*Accession Number:* 20080327–0045.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, April 16, 2008.

*Docket Numbers:* ER08–714–000.

*Applicants:* The American Electric Power Service Corporation.

*Description:* American Electric Power Co, Inc submits a Notice of Cancellation of Service Agreements under Public Service Co of Oklahoma FERC Electric Tariff, First Revised Volume 5.

*Filed Date:* 03/26/2008.

*Accession Number:* 20080327–0044.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, April 16, 2008.

*Docket Numbers:* ER08–715–000.

*Applicants:* The American Electric Power Service Corporation.

*Description:* American Electric Power Service Corporation submits Notice of Cancellation of Service Agreements under AEP Texas North Company known as West Texas Utilities Company FERC Electric Tariff, First Revised Volume 8.

*Filed Date:* 03/26/2008.

*Accession Number:* 20080327–0043.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, April 16, 2008.

*Docket Numbers:* ER08–716–000.

*Applicants:* The American Electric Power Service Corporation.

*Description:* American Electric Power Service Corporation submits Notice of Cancellation of Service Agreements under AEP Texas Central Company known as Central Power and Light Company FERC Electric Tariff, Second Revised Volume 8.

*Filed Date:* 03/26/2008.

*Accession Number:* 20080327–0042.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, April 16, 2008.

*Docket Numbers:* ER08–717–000.

*Applicants:* Tucson Electric Power Company.

*Description:* Tucson Electric Power Company submits an executed Control Area Services Agreement between UNS Electric, Inc and Tucson Electric Power Company dated March 20, 2008.

*Filed Date:* 03/26/2008.

*Accession Number:* 20080327–0041.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, April 16, 2008.

*Docket Numbers:* ER08–718–000.

*Applicants:* Wisconsin Power and Light Company.

*Description:* Wisconsin Power and Light Company submits a Second Revised Power Supply Agreement with Wisconsin Public Power Inc.

*Filed Date:* 03/26/2008.

*Accession Number:* 20080327–0052.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, April 16, 2008.

*Docket Numbers:* ER08–719–000.

*Applicants:* Xcel Energy Services Inc.

*Description:* Northern States Power Company submits a Qualifying Facility Generator Distribution Interconnection and Operating Agreement and a Distribution Wheeling Service Agreement with Twin Cities Hydro, LLC.

*Filed Date:* 03/26/2008.

*Accession Number:* 20080327–0056.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, April 16, 2008.

*Docket Numbers:* ER08–720–000.

*Applicants:* Consolidated Edison Co. of New York, Inc.

*Description:* Consolidated Edison Company of New York, Inc submits the Power Purchase Agreement with Cogen Technologies, Inc.

*Filed Date:* 03/26/2008.

*Accession Number:* 20080327–0082.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, April 16, 2008.

*Docket Numbers:* ER08–721–000.

*Applicants:* Maine Public Service Company.

*Description:* Maine Public Service Company submits an executed Interconnection System Impact Study Agreement etc.

*Filed Date:* 03/26/2008.

*Accession Number:* 20080327–0127.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, April 16, 2008.

*Docket Numbers:* ER08–722–000.

*Applicants:* Allegheny Energy Supply Company, LLC.

*Description:* Allegheny Energy Supply Co, LLC requests authorization to make wholesale power sales to its affiliate Potomac Edison Co, to become effective 6/1/08.

*Filed Date:* 03/26/2008.

*Accession Number:* 20080327–0083.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, April 16, 2008.

*Docket Numbers:* ER08–723–000.

*Applicants:* Wisconsin Power and Light Company.

*Description:* Wisconsin Power and Light Company submits Second Revised

Master Power Supply Agreement between Lakes Utilities and WPL, GLU and WPL entered into the Second Revised PSA on 2/21/08.

*Filed Date:* 03/27/2008.

*Accession Number:* 20080328–0158.

*Comment Date:* 5 p.m. Eastern Time on Thursday, April 17, 2008.

*Docket Numbers:* ER08–724–000.

*Applicants:* Pacific Gas and Electric Company.

*Description:* Pacific Gas and Electric Company submits a Notice of Termination for certain Tariff Sheets between PG&E, the Western Area Power Administration—Sierra Nevada Region and the U.S. Department of Energy Berkeley Site Office formerly etc.

*Filed Date:* 03/27/2008.

*Accession Number:* 20080328–0159.

*Comment Date:* 5 p.m. Eastern Time on Thursday, April 17, 2008.

*Docket Numbers:* ER08–725–000.

*Applicants:* Carolina Power & Light Company.

*Description:* Progress Energy, Inc submits filing of its subsidary Carolina Power & Light Company re a Network Integration Service Agreement and Network Operating Agreement etc under ER08–725.

*Filed Date:* 03/27/2008.

*Accession Number:* 20080328–0160

*Comment Date:* 5 p.m. Eastern Time on Thursday, April 17, 2008.

*Docket Numbers:* ER08–726–000.

*Applicants:* American Electric Power Service Corporation.

*Description:* The American Electric Power Service Corporation submits a Sixth revision to the Interconnection and Local Delivery Agreement between AEP and Wabash Valley Power Authority.

*Filed Date:* 03/27/2008.

*Accession Number:* 20080328–0161.

*Comment Date:* 5 p.m. Eastern Time on Thursday, April 17, 2008.

*Docket Numbers:* ER08–727–000.

*Applicants:* Indianapolis Power & Light Company.

*Description:* Indianapolis Power & Light Co submits the executed Royalton Interconnection Facilities Agreement with Wabash Valley Power Association, Inc.

*Filed Date:* 03/27/2008.

*Accession Number:* 20080328–0115.

*Comment Date:* 5 p.m. Eastern Time on Thursday, April 17, 2008.

*Docket Numbers:* ER08–728–000.

*Applicants:* Florida Power Corporation.

*Description:* Florida Power Corp submits a cost-based power sales agreement with Seminole Electric Coop, Inc.

*Filed Date:* 03/27/2008.

*Accession Number:* 20080328–0114.

*Comment Date:* 5 p.m. Eastern Time on Thursday, April 17, 2008.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES08–36–000.

*Applicants:* California Independent System Operator Corporation.

*Description:* California Independent System Operator Corporation submits Application Under Section 204 of the Federal Power Act for an Order Authorizing the Issuance of Securities under ES08–36.

*Filed Date:* 03/17/2008.

*Accession Number:* 20080320–0055.

*Comment Date:* 5 p.m. Eastern Time on Monday, April 07, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E8–7018 Filed 4–3–08; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

March 31, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP96–200–186.

*Applicants:* CenterPoint Energy Gas Transmission Company.

*Description:* CenterPoint Energy Gas Transmission Company submits an amended negotiated rate agreement with Constellation Energy Commodities Group, Inc.

*Filed Date:* 03/27/2008.

*Accession Number:* 20080328–0076.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, April 08, 2008.

*Docket Numbers:* RP03–36–030.

*Applicants:* Dauphin Island Gathering Partners.

*Description:* Dauphin Island Gathering Partners submits its Thirty-Sixth Revised Sheet 9 et al. to FERC Gas Tariff, First Revised Volume 1.

*Filed Date:* 03/26/2008.

*Accession Number:* 20080328–0082.

*Comment Date:* 5 p.m. Eastern Time on Monday, April 07, 2008.

*Docket Numbers:* RP08–123–001, RP07–499–003, RP07–498–003 (Not Consolidated).

*Applicants:* Central Kentucky Transmission Company.

*Description:* Central Kentucky Transmission Company submits their request that FERC approve a change in the effective date to June 1, 2008 for certain tariff sheets.

*Filed Date:* 03/26/2008.

*Accession Number:* 20080328–0078.

*Comment Date:* 5 p.m. Eastern Time on Monday, April 07, 2008.

*Docket Numbers:* RP08–124–001, RP07–508–003, RP07–500–004, RP07–478–004, RP07–415–001, RP07–412–004, RP07–174–004 (Not Consolidated).

*Applicants:* Columbia Gulf Transmission Company.

*Description:* Columbia Gulf Transmission Company's request that the FERC approve a change in the effective date to June 1, 2008 for certain tariff sheets.

*Filed Date:* 03/26/2008.

*Accession Number:* 20080328–0081.

*Comment Date:* 5 p.m. Eastern Time on Monday, April 07, 2008.

*Docket Numbers:* RP08–125–001, RP07–515–003, RP07–497–003, (Not Consolidated).

*Applicants:* Crossroads Pipeline Company.

*Description:* Crossroad Pipeline Company's request that the FERC approve a change in the effective date to June 1, 2008 for certain tariff sheets.

*Filed Date:* 03/26/2008.

*Accession Number:* 20080328–0080.

*Comment Date:* 5 p.m. Eastern Time on Monday, April 07, 2008.

*Docket Numbers:* RP08–127–001, RP08–110–001, RP07–509–004, RP07–479–004, RP07–414–003, RP07–413–004, RP07–340–005, (Not Consolidated).

*Applicants:* Columbia Gas Transmission Corporation.

*Description:* Columbia Gas Transmission Corporation's request that the FERC approve a change in the effective date to June 1, 2008 for certain tariff sheets.

*Filed Date:* 03/26/2008.

*Accession Number:* 20080328–0079.

*Comment Date:* 5 p.m. Eastern Time on Monday, April 07, 2008.

*Docket Numbers:* RP08–218–001.

*Applicants:* Gulfstream Natural Gas System, L.L.C.

*Description:* Gulfstream Natural Gas System LLC submits Original Sheet 8.02i and 8.02j to FERC Gas Tariff, Original Volume 1, to become effective March 26, 2008.

*Filed Date:* 03/27/2008.

*Accession Number:* 20080328–0132.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, April 08, 2008.

*Docket Numbers:* RP08–283–000.

*Applicants:* Maritimes & Northeast Pipeline, L.L.C.

*Description:* Maritimes & Northeast Pipeline, LLC submits Second Revised Sheet 400 et al. to FERC Gas Tariff, First Revised Volume 1, to become effective April 27, 2008.

*Filed Date:* 03/27/2008.

*Accession Number:* 20080328–0077.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, April 08, 2008.

*Docket Numbers:* RP08–284–000.

*Applicants:* Pine Needle LNG Company, LLC.

*Description:* Pine Needle LNG Company LLC submits Fifteenth Revised Sheet 4 to its FERC Gas Tariff, Original Volume 1, to become effective May 1, 2008.

*Filed Date:* 03/27/2008.

*Accession Number:* 20080328–0113.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, April 08, 2008.

*Docket Numbers:* RP08–287–000.

*Applicants:* Rockies Express Pipeline LLC.

*Description:* Annual Incidental Purchases and Sales Report of Rockies Express Pipeline LLC.

*Filed Date:* 03/28/2008.

*Accession Number:* 20080328–5093.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, April 09, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E8–7017 Filed 4–3–08; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6697–6]**

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2007 (72 FR 17156).

### Draft EISs

*EIS No. 20070512, ERP No. D–FHW–G40196–00,* Tier 1 DEIS—I–69/Trans-Texas Corridor Study, Improvement to International, Interstate and Instrastate Movement of Good and People, Louisiana-Mexico/Northeast Texas to Mexico.

*Summary:* EPA does not object to the proposed project development.

Rating LO.

*EIS No. 20070545, ERP No. D–IBR–J39037–ND,* Northwest Area Water Supply Project, To Construct a Biota Water Treatment Plant, Lake Sakakawea, Missouri River Basin to Hudson Bay Basin, ND.

*Summary:* EPA expressed environmental concerns about ecological consequences associated with the transfer of invasive species as a result of water treatment system or infrastructure failures. The monitoring and system maintenance aspects of an adaptive management plan will help ensure that ecological impacts caused by a potential system failure are avoided and minimized.

Rating EC1.

*EIS No. 20080040, ERP No. D–IBR–K65337–CA,* Folsam Lake State Recreation Area & Folsam Powerhouse State Historic Park, General Plan/Resource Management Plan, Implementation, Placer County, CA.

*Summary:* EPA expressed environmental concerns about air quality impacts. EPA requested an analysis of air emissions from current and proposed recreational uses, and to demonstrate general conformity.

Rating EC2.

*EIS No. 20080049, ERP No. D–FRC–G03037–00,* Midcontinent Express Pipeline Project, (Docket Nos. CP08–6–000), Construction and Operation to Facilitate the Transport of 1,500, 000 dekatherms per day of Natural Gas from Production Fields in eastern TX, OK, and AR to Market Hub, Located in various counties and parishes in OK, TX, LA, MS and AL.

*Summary:* EPA expressed environmental concerns about air quality impacts, wetland impacts, environmental justice issues, and requested information and mitigation to address these concerns.

Rating EC2.

*EIS No. 20070021, ERP No. DS–BLM–J02039–MT,* Montana Statewide Oil and Gas, Development Alternative for Coal Bed Natural Gas Production and Amendment of the Powder River and Billings Resource Management Plans, Additional Information Three New Alternatives, Implementation, U.S. Army COE section 404 Permit, NPDES Permit,Several Cos, MT.

*Summary:* EPA expressed environmental concerns about potential impacts to air quality and water quality. EPA recommended establishment of an air quality stakeholder group; additional near-field air quality modeling; and additional water and air quality monitoring.

Rating EC2.

**FINAL EISs**

*EIS No. 20080061, ERP No. F–AFS–L65538–OR,* Thorn Fire Salvage Recovery Project, Salvaging Dead and Dying Timber, Shake Table Fire Complex, Malheur National Forest, Grant County, OR.

*Summary:* EPA's previous concerns have been resolved; therefore, EPA has no objections to the proposed action.

*EIS No. 20080064, ERP No. F–BIA–C60006–NY,* Oneida Nation of New York Conveyance of Lands into Trust, Proposes to Transfer 17,370 Acre of Fee Land into Federal Trust Status, Oneida, Madison and New York Counties, NY.

*Summary:* EPA does not object to the proposed action.

*EIS No. 20080075, ERP No. F–AFS–F65067–WI,* Fishel Vegetation and Transportation Management Project, To Implement Land Management Activities, Eagle River-Florence Ranger District, Chequamegor-Nicolet National Forest, Forest and Vilas Counties, WI.

*Summary:* EPA's previous issues have been resolved; therefore, EPA does not object to the proposed action.

*EIS No. 20070486, ERP No. FS–COE–E36074–00,* Yazoo Basin Reformulation Study, Supplement No. 1 to the 1982 Yazoo Area Pump Project, Flood Control, Mississippi River and Tributaries, Yazoo Basin, MS and LA.

*Summary:* EPA continues to have environmental concerns about significant degradation of extremely valuable wetlands resources that have been, and continue to be, vulnerable to conversion and loss throughout the Mississippi Delta. Uncertainties regarding the efficacy of the compensatory mitigation plan and the potential availability of practicable, less environmentally damaging alternatives to provide needed flood protection improvements, magnify EPA's concerns regarding the nature and extent of the wetlands impacts. EPA considers the proposal a candidate for referral to CEQ. EPA is also considering whether to proceed with an additional review of the project pursuant to our authorities under the CWA.

*EIS No. 20080046, ERP No. FS–WAP–K08024–CA,* Sacramento Area Voltage Support Project, Selected Preferred Alternative B, Proposal to Build a Double-Circuit 230–kV Transmission Line, Placer, Sacramento and Sutter Counties, CA.

*Summary:* EPA does not object to the proposed project.

Dated: April 1, 2008.

**Ken Mittelholtz,**

*Environmental Protection Specialist, Office of Federal Activities.*

[FR Doc. E8–7055 Filed 4–3–08; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6697–5]**

### Environmental Impacts Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly Receipt of Environmental Impact Statements

Filed 03/24/2008 Through 03/28/2008

Pursuant to 40 CFR 1506.9.

*EIS No. 20080117, Draft EIS, AFS, 00,* Selway-Bitterroot Wilderness Plants Management Project, To Prevent the Establishment of New Invaders and Reduce the Impacts of Established Invasive Plants on Native Plant Community Stability, Sustainability and Diversity, Nez Perce, Clearwater, Lolo, and Bitterroot National Forests, ID and MT, *Comment Period Ends:* 05/19/2008, *Contact:* Chad Benson 208–942–3113.

*EIS No. 20080118, Final EIS, FAA, CA,* Horizon Air Service to Mammoth Yosemite Airport Project, Proposed Operations Specifications Amendment To Provide Scheduled Air Service, Town of Mammoth Lakes, Mono County, CA, *Wait Period Ends:* 05/05/2008, *Contact:* Chuck Cox 425–227–2243.

*EIS No. 20080119, Draft EIS, USN, CA,* Southern California Range Complex, To Organize, Train, Equip, and Maintain Combat-Ready Naval Forces, San Diego, Orange and Los Angeles Counties, CA, *Comment Period Ends:* 05/19/2008, *Contact:* Alexander Stone 619–545–8128.

*EIS No. 20080120, Draft EIS, USN, FL,* Naval Surface Warfare Center Panama City Division (NSWC PCD), Capabilities To Conduct New and Increased Mission Operations for the Department of Navy (DON) and Customers within the three Military Operating Area and St. Andrew Bay (SAT), Gulf of Mexico, FL, *Comment Period Ends:* 05/19/2008, *Contact:* Carmen Ferrer 850–234–4146.

*EIS No. 20080121, Final EIS, FHW, 00,* Interstate I–94, I–43, I–894, and WI–119 (Airport Spur) I–94/USH 41 Interchange to Howard Avenue, To Address Freeway System's Deteriorated Conditions, Funding and U.S. Army COE Section 404 Permit, Kenosha, Racine and Milwaukee Counties, WI and Lake County, IL, *Wait Period Ends:* 05/05/2008, *Contact:* David Scott 608–829–7522 .

*EIS No. 20080122, Draft EIS, UAF, NV,* Nellie Air Force Base (AFB), Proposes to Base 36 F–35 Fighter Aircraft, Assigned to the Force Development Evaluation (FDE) Program and Weapons School (WS) Beddown, Clark County, NV, *Comment Period Ends:* 05/19/2008, *Contact:* Sheryl Parker 703–604–5264.

*EIS No. 20080123, Final EIS, NPS, MN,* Pipestone National Monument General Management Plan, Implementation, Pipestone County, MN, *Wait Period Ends:* 05/05/2008, *Contact:* Nick Chevance 507–825–5464.

*EIS No. 20080124, Final EIS, USN, MD,* National Naval Medical Center, Activities To Implement 2005 Base Realignment and Closure Actions, Construction and Operation of New Facilities for Walter Reed National

Military Medical Center, Bethesda, MD, *Wait Period Ends:* 05/05/2008, *Contact:* Andrew Gutberlet 301–295–2404.

**Amended Notices**

*EIS No. 20070512, Draft EIS, FHW, TX,* Tier 1 DEIS—I–69/Trans-Texas Corridor Study, Improvement to International, Interstate and Instrastate Movement of Good and People, Louisiana-Mexico/Northeast Texas to Mexico, *Comment Period Ends:* 04/18/2008, *Contact:* Donald Davis 512–536–5900. Revision to FR Notice Published 12/14/2007: Extending Comment Period from 3/19/2008 to 4/18/2008.

*EIS No. 20080083, Draft Supplement, AFS, WV,* Lower Williams Project Area (LWPA), Additional Information, Proposed To Perform Vegetation Management and Wildlife Habitat Improvements, Implementation, Gauley Ranger District, Monongahela National Forest, Webster County, WV, *Comment Period Ends:* 05/06/2008, *Contact:* O'Dell Tucker 304–799–4334 Ext 19. Revision to FR Notice Published on 03/14/2008: Extending Comment Period 04/28/2008 to 05/06/2008.

*EIS No. 20080103, Draft EIS, USN, FL,* Mayport Naval Station Project, Proposed Homeporting of Additional Surface Ships, Several Permits, Mayport, FL, *Comment Period Ends:* 05/12/2008, *Contact:* William Sloger 874–820–5797. Revision to FR Published 03/28/2008: Correction to Contact Person Name and Telephone Number.

Dated: 04/01/2008.

**Ken Mittelholtz,**

*Environmental Protection Specialist, Office of Federal Activities.*

[FR Doc. E8–7036 Filed 4–3–08; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8551–4]**

## Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held April 22–24, 2008 at RESOLVE, Washington, DC. The CHPAC was created to advise the Environmental Protection Agency on science, regulations, and other issues relating to children's environmental health.

**DATES:** The CHPAC will meet on Tuesday, April 22, Wednesday, April 23, and Thursday, April 24, 2008 at RESOLVE.

**ADDRESSES:** RESOLVE, 1255 23rd Street, NW., Suite 275 Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Carolyn Hubbard, Child and Aging Health Protection Division, USEPA, MC 1107A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–2189, *hubbard.carolyn@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The meetings of the CHPAC are open to the public. The CHPAC plenary will meet on Wednesday, April 23 from 9 a.m. to 5:30 p.m., Thursday, April 24 from 8:30 a.m. to 12:30 p.m. The Task Groups will meet Tuesday, April 22 from 9 a.m. to 5:30 p.m. Agenda items include a panel presentation on climate change, an evaluation of the Pediatric Environmental Health Specialty Units and a discussion of chemicals management policy. Draft agenda attached.

*Access and Accommodations:* For information on access or services for individuals with disabilities, please contact Carolyn Hubbard at 202–564–2189 or *hubbard.carolyn@epa.gov.* To request accommodation of a disability, please contact Carolyn Hubbard preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: March 31, 2008.

**Carolyn Hubbard,**

*Designated Federal Official.*

### Draft Agenda

*Tuesday, April 22, 2008: Task Group Sessions*

9–12 Chemicals Management Policy Point People.
10–4:30 Pediatric Environmental Health Specialty Units (PEHSU) Task Group.
4:30–5:30 Task Group Follow-up Work.

*Wednesday, April 23, 2008: CHPAC Plenary Session*

9–9:30 Welcome, Introduction of New OCHPEE Director, & Agenda Review.
9:30–9:55 Highlights of Recent EPA Activities.
9:55–10 MINI ''STRETCH'' BREAK.
10–11:05 Panel on Children's Health Implications of Climate Change (Part 1).
11:05–12:10 Panel on Children's Health Implications of Climate Change (Part 2).
12:10–1:10 Lunch (on your own).
1:10–2 Reflections on Children's Health Implications of Climate Change.
2–3 National Children's Study.
3–3:15 Break.
3:15–5 Findings from Pediatric Environmental Health Specialty Units (PEHSU).
5–5:30 Lead NAAQS Next Steps.
5:30–6 Public Comment/Adjourn for the Day.

*Thursday, April 24, 2008: CHPAC Plenary Session Continued*

8:30–8:35 Check In and Agenda Review.
8:35–9:30 Closure on PEHSU Comment Letter.
9:30–10:15 Healthy School Environments Assessment Tool.
10:15–10:30 Break.
10:30–11:30 Discussion with EPA Regarding Agency Response to CHPAC Comment Letter on Chemicals Management Policy & Other Progress on Children's Health Aspects of Chemicals Management Policy.
11:30–12:10 CHPAC Reflections on Next Steps re: Chemicals Management Policy.
12:10–12:30 Wrap Up/Next Steps.
12:30 Adjourn Plenary.

[FR Doc. E8–7059 Filed 4–3–08; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

**[FCC 08–92; WT Docket No. 05–211]**

## In the Matter of Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In the *Second Order on Reconsideration of the Second Report and Order* the Commission addresses a petition for reconsideration of the Commission's *Second Report and Order* concerning the Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures.

**FOR FURTHER INFORMATION CONTACT:** *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* Stephen Johnson at (202) 418–0660.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Second Order on Reconsideration of the Second Report and Order* released on March 26, 2008. The complete text of the *Second Order on Reconsideration of the Second Report and Order* is available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Second Order on Reconsideration of the Second Report and Order* may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com*. When ordering documents from BCPI, please provide the appropriate FCC document number, for example, FCC 08–92. The *Second Order on Reconsideration of the Second Report and Order* is also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions*.

**Overview**

1. The *Second Order on Reconsideration of the Second Report and Order* formally denies a Petition for Expedited Reconsideration (Petition) filed by Council Tree Communications, Inc., Bethel Native Corporation, and the Minority Media and Telecommunications Council (collectively, the Joint Petitioners).

2. The Petition sought reconsideration of various Commission decisions made in the *Second Report and Order* released on April 25, 2006, FR 71, 26245 (May 4, 2006), which modified the Commission's part 1 competitive bidding rules governing designated entities, including rules on eligibility for benefits and unjust enrichment. Joint Petitioners filed their Petition on May 5, 2006. On June 2, 2006, prior to the deadline for filing petitions for reconsideration of the Second Report and Order, the Commission released, *sua sponte*, an *Order on Reconsideration*, FR 71 34262 (June 14, 2006), which considered and rejected the arguments included in the Petition without formally denying the Petition.

3. In a July 2006 letter to the Commission, Joint Petitioners stated that the Commission had already decided the merits of the Petition and that the Joint Petitioners were no longer seeking reconsideration. Accordingly, Joint Petitioners asked that the Commission formally dispose of their Petition in order to take the *de jure* action already taken *de facto* by the Commission. The Commission agreed with Joint Petitioners that it had already decided the merits of the Petition in the *Order on Reconsideration* and that the *Order on Reconsideration* had conclusively rejected the Joint Petitioners' legal arguments.

4. Accordingly, *it is ordered* that pursuant to Sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act, as amended, 47 U.S.C. 154(i), 155(b), 155(c)(1), 303(r), and 309(j), the Petition is hereby *denied*.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E8–7058 Filed 4–3–08; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Proposed Collection Renewals; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following collections of information titled: ''Flood Insurance,'' OMB No. 3064–120, and ''Forms Relating to Processing Deposit Insurance Claims,'' OMB No. 3064–0143.

**DATES:** Comments must be submitted on or before June 3, 2008.

**ADDRESSES:** Interested parties are invited to submit written comments to the FDIC by any of the following methods. All comments should refer to the name of the collection:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@fdic.gov.* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room F–1064, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Leneta G. Gregorie, at the telephone number and address identified above.

**SUPPLEMENTARY INFORMATION:**

*Proposal to renew the following currently approved collections of information:*

1. *Title:* Flood Insurance.

*OMB Number:* 3064–0120.

*Frequency of Response:* On occasion.

*Affected Public:* Any depository institution that makes one or more loans to be secured by a building located on property in a special flood hazard area.

*Estimated Number of Respondents/Recordkeepers:* 5,272.

*Estimated Number of Transactions:* 180,000.

*Estimated Reporting Hours:* .05 hours × 180,000 = 9,000.

*Estimated Recordkeeping Hours:* 1 hour × 5,272 hours = 5,272 hours.

*Estimated Total Annual Reporting and Recordkeeping Burden Hours:* 5,272 + 9,000 = 14,272 hours.

*General Description of Collection:* Each supervised lending institution is currently required to provide a notice of special flood hazards to each borrower with a loan secured by a building or mobile home located or to be located in an area identified by the Director of the Federal Emergency Management Administration as being subject to special flood hazards. The Riegle Community Development Act requires that each institution must also provide a copy of the notice to the servicer of the loan (if different from the originating lender).

2. *Title:* Forms Relating to Processing Deposit Insurance Claims.

*OMB Number:* 3064–0143.

*Frequency of Response:* On occasion.

*Affected Public:* Deposit brokers and depositors of failed insured institutions.

*Estimated Number of Respondents:* 5,236 (see chart below).

*Total Annual Burden:* 2,875 hours (see chart below).

BURDEN ESTIMATE, COMBINED DEPOSIT BROKERS AND INDIVIDUALS

[Frequency of response: Occasional]

| Form No. | Form title | Hours | Respondents | Burden hours |
|---|---|---|---|---|
| 7200/03 | Declaration for Testamentary Deposit (Single Grantor) | .50 | 1,000 | 500 |
| 7200/04 | Declaration for Public Unit Deposit | .50 | 500 | 250 |
| 7200/05 | Declaration for Trust | .50 | 1,100 | 550 |
| 7200/06 | Declaration of Independent Activity | .50 | 25 | 12.5 |
| 7200/07 | Declaration of Independent Activity for Unincorporated Association. | .50 | 25 | 12.5 |
| 7200/08 | Declaration for Joint Ownership Deposit | .50 | 25 | 12.5 |
| 7200/09 | Declaration for Testamentary Deposit (Multiple Grantors) | .50 | 500 | 250 |
| 7200/10 | Declaration for Defined Contribution Plan | 1.0 | 50 | 50 |
| 7200/11 | Declaration for IRA/KEOGH Deposit | .50 | 50 | 25 |
| 7200/12 | Declaration for Defined Benefit Plan | 1.0 | 200 | 200 |
| 7200/13 | Declaration of Custodian Deposit | .50 | 50 | 25 |
| 7200/14 | Declaration for Health and Welfare Plan | 1.0 | 200 | 200 |
| 7200/15 | Declaration for Plan and Trust | .50 | 1,300 | 650 |
| Subtotal | | | 5,025 | 2,738 |

BURDEN ESTIMATE, DEPOSIT BROKERS ONLY

| | Burden per response | Number of responses | Burden hours |
|---|---|---|---|
| Deposit Broker Submission Checklist | 5 minutes | 70 | 6 |
| Diskette, following "Broker Input File Requirements." | The burden will vary depending on the broker's number of brokered accounts.. | | |
| | 45 minutes | 53 responses (75% of 70 annual responses). | 40 |
| | 5 hours | 18 responses (25% of 70 annual responses). | 90 |
| Exhibit B, the standard agency agreement, or the non-standard agency agreement. | 1 minute | 70 | 1 |
| Subtotal | | 211 | 137 |

*General Description of Collection:* When an insured institution is closed by its primary regulatory authority, the FDIC has the responsibility to pay the insured claims of the failed bank depositors pursuant to sections 11(a) and (f) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1821 (a) and (f), and the FDIC's regulation on ''Deposit Insurance Coverage,'' 12 CFR part 330.

Generally, deposits are insured to a maximum of $100,000. This maximum coverage is based on ''ownership rights and capacities.'' All deposits that are maintained in the same right and capacity are added together and insured up to $100,000 in accordance with the regulations relating to deposit insurance of that particular deposit insurance ownership category. Deposits held in different ownership categories are eligible for $100,000 coverage per category. For example, as a general rule, single-ownership accounts are separately insured from trust accounts held for qualified beneficiaries.

At the time of closing, the FDIC is provided information about customer accounts through the failed institution's records. Based on the institution's records, the FDIC makes preliminary determinations about insurance coverage for each depositor. Depositors initially deemed to be uninsured because their deposits are over $100,000 may be qualified for additional insurance coverage if they can provide documents certifying to the existence of varying ownership rights and capacities.

a. *General Deposit Accounts.* The forms, declarations, and affidavits in this collection facilitate customers providing the FDIC with the information that may permit a more comprehensive deposit insurance determination.

b. *Deposit Brokers.* A failed institution's account records may not reveal the actual owner(s) of a particular deposit account. Rather, the account records may indicate that the deposit was placed at the institution by a deposit broker on behalf of one or more third parties. In some cases, the broker's customer may not be an actual owner of the deposit but merely a ''second-tier'' deposit broker with its own customers. In turn, these customers could be ''third-tier'' deposit brokers with their own customers. Deposits held in the name of a deposit broker on behalf of clients are covered by federal deposit insurance (up to the $100,000 limit) the same as if the broker's clients had deposited the funds directly into the institution (assuming that the clients are the actual owners of the deposit). This is called ''pass-through'' deposit insurance coverage.

In order to analyze ownership interest and provide pass-through insurance coverage, the FDIC must obtain certain information from both first and lower-tier deposit brokers: (1) Evidence that each deposit broker is not an owner but an agent or custodian with respect to some or all of the funds at issue; (2) a list of all parties for whom each deposit broker acted as agent or custodian; and (3) the dollar amount of funds held by each deposit broker for each such party as of the date of the depository institution's failure.

**Request for Comment**

*Comments are invited on:* (a) Whether this collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection,

including the validity of the methodologies and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC, this 1st day of April, 2008.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. E8–7003 Filed 4–3–08; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System (Board).

**ACTION:** Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (collectively, the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

On January 15, 2008, the Board, under the auspices of the Federal Financial Institutions Examination Council (FFIEC) and on behalf of the agencies, published a notice in the **Federal Register** (73 FR 2491) requesting public comment for 60 days to extend, with revision, the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and the Report of Assets and Liabilities of a Non-U.S. Branch That Is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S), which are currently approved information collections. The comment period for this notice expired on March 17, 2008. After receiving four comment letters, the FFIEC and the agencies have made no modifications to the proposal, but are delaying implementation to September 30, 2008, except for certain changes for which a transition period begins June 30, 2008. The Board hereby gives notice that it plans to submit to OMB on behalf of the agencies a request for approval of the FFIEC 002 and the FFIEC 002S.

**DATES:** Comments must be submitted on or before May 5, 2008.

**ADDRESSES:** Interested parties are invited to submit written comments to the agency listed below. All comments, which should refer to the OMB control number, will be shared among the agencies. You may submit comments, identified by FFIEC 002 (7100–0032) or FFIEC 002S (7100–0273), by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include the OMB control number in the subject line of the message.
- *Fax:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the Desk Officer for the agencies by mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503 or by fax to 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Additional information or a copy of the collection may be requested from Michelle Shore, Federal Reserve Board Clearance Officer, 202–452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call 202–263–4869, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

*Proposal to request approval from OMB of the extension for three years, with revision, of the following currently approved collections of information:*

*Report Titles:* Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks; Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank Form Numbers: FFIEC 002; FFIEC 002S.

*OMB Numbers:* 7100–0032; 7100–0273.

*Frequency of Response:* Quarterly.

*Affected Public:* U.S. branches and agencies of foreign banks.

*Estimated Number of Respondents:* FFIEC 002–264; FFIEC 002S–65.

*Estimated Average Time per Response:* FFIEC 002–25 hours; FFIEC 002S–6 hours.

*Estimated Total Annual Burden:* FFIEC 002–26,400 hours; FFIEC 002S–1,560 hours.

*General Description of Reports:* These information collections are mandatory: 12 U.S.C. 3105(c)(2), 1817(a)(1) and (3), and 3102(b). Except for select sensitive items, the FFIEC 002 is not given confidential treatment; the FFIEC 002S is given confidential treatment [5 U.S.C. 552(b)(4)].

*Abstract:* On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file the FFIEC 002, which is a detailed report of condition with a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The FFIEC 002S is a supplement to the FFIEC 002 that collects information on assets and liabilities of any non-U.S. branch that is managed or controlled by a U.S. branch or agency of the foreign bank. (Managed or controlled means that a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the

responsibility for recordkeeping in respect of assets or liabilities for that foreign branch resides at the U.S. branch or agency.) A separate FFIEC 002S must be completed for each managed or controlled non-U.S. branch and filed quarterly along with the U.S. branch or agency's FFIEC 002. The data from both reports are used for: (1) Monitoring deposit and credit transactions of U.S. residents; (2) monitoring the impact of policy changes; (3) analyzing structural issues concerning foreign bank activity in U.S. markets; (4) understanding flows of banking funds and indebtedness of developing countries in connection with data collected by the International Monetary Fund (IMF) and the Bank for International Settlements (BIS) that are used in economic analysis; and (5) assisting in the supervision of U.S. offices of foreign banks. The Federal Reserve System collects and processes these reports on behalf of all three agencies.

**Current Actions**

In a **Federal Register** notice published on January 15, 2008 (73 FR 2491), the Board, on behalf of the agencies, requested comment on a proposal to implement a number of revisions to the existing reporting requirements of the FFIEC 002. The proposed revisions would help to achieve consistency with the Reports of Condition and Income (Call Report) (FFIEC 031 and FFIEC 041) filed by insured commercial banks and state-chartered savings banks. The agencies also proposed to combine the FFIEC 002 and FFIEC 002S into one OMB control number, 7100–0032. In response to the January 15, 2008, notice, the agencies received four comment letters from a branch of a foreign bank, a federal agency, a bankers' organization, and a foreign banking organization. One commenter supported the proposed changes and described its use of the data to analyze the effect of quarterly developments on the U.S. International Transactions Accounts. Two commenters had no comments on the proposed revisions, but did offer comments on the use of International Financial Reporting Standards in regulatory reports such as the FFIEC 002 and the FFIEC 002S. The last commenter had no comments on the proposed revisions, but did suggest delaying the proposed implementation date for some of these revisions. After considering these comments, the FFIEC and the agencies have approved the revisions to the FFIEC 002 and the FFIEC 002S as originally proposed. However, the agencies will implement the changes as of the September 30, 2008, reporting date rather than the proposed June 30, 2008, reporting date with one exception. The Schedule O changes will remain on the same interim transition period that had been proposed, which covers the June 30, 2008, through December 31, 2008, reporting dates.

**Request for Comment**

*Comments are invited on:*

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates 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;

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; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or other forms of information technology as well as other relevant aspects of the information collection request.

Board of Governors of the Federal Reserve System, April 1, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E8–6991 Filed 4–3–08; 8:45 am]

BILLING CODE 6210–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

### Privacy Act of 1974, New OIG Privacy Act System of Records: Administrative Files

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Notice of proposed new Privacy Act systems of records.

**SUMMARY:** The Office of Inspector General (OIG) is proposing a new system of records, entitled ''Administrative Files'' (09–90–0076). This proposed notice is in accordance with the Privacy Act requirement that agencies publish their systems of records in the **Federal Register** when there is a revision, change, or addition. This system of records contains certain administrative files for the purpose of maintaining, archiving, and filing records.

**DATES:** *Effective Date:* This system of records will become effective without further notice on June 3, 2008, unless comments received on or before that date result in a contrary determination.

*Comment Date:* Comments on this new system of records will be considered if we receive them at the addresses provided below no later than 5 p.m. Eastern Standard Time on May 5, 2008.

**ADDRESSES:** In commenting, please reference file code OIG–794–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. However, you may submit comments using one of the following three ways (no duplicates, please):

1. *Electronically.* You may submit electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* (Attachments should be in Microsoft Word, if possible.)

2. *By regular, express, or overnight mail.* You may mail your printed or written submissions to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–794–PN, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* You may deliver, by hand or courier, before the close of the comment period, your printed or written comments to the Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201. Because access to the interior of the Cohen Building is not readily available to persons without Federal Government identification, commenters are encouraged to schedule their delivery with one of our staff members at (202) 358–3141.

*Inspection of Public Comments:* All comments received before the end of the comment period will be posted on *http://www.regulations.gov* for public viewing. Hard copies will also be available for public inspection at the Office of Inspector General, Department

of Health and Human Services, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201, Monday through Friday from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (202) 619–0089.

**FOR FURTHER INFORMATION CONTACT:** Joel Schaer, OIG Regulations Officer, Office of External Affairs, (202) 619–0089; or Melissa McCurdy, Office of Counsel to the Inspector General, (202) 619–0335.

**SUPPLEMENTARY INFORMATION:** The Office of Inspector General (OIG) proposes to establish a new Privacy Act system of records, 09–90–0076, ''Administrative Files, HHS/OS/OIG/OCIG.'' The Inspector General Act of 1978 (5 U.S.C. app.) established OIG ''to conduct and supervise audits and investigations relating to the programs and operations'' of the Department of Health and Human Services (HHS). Within OIG, the Office of Counsel to the Inspector General (OCIG): (1) Provides general legal services to OIG including, among other things, advice and representation on HHS programs and operations, administrative law issues, and criminal procedure; (2) imposes program exclusions and civil money penalties on health care providers and litigates those actions within the department; (3) represents OIG in the global settlement of cases arising under the False Claims Act; (4) represents OIG in personnel actions; and (5) issues anti-kickback safe harbor regulations, renders advisory opinions on OIG sanctions, and issues special fraud alerts and other industry guidance.

In addition, in compliance with the ''Incident Reporting and Handling Requirements'' set forth in the Office of Management and Budget's Memoranda 07–16, *Safeguarding Against and Responding to the Breach of Personally Identifiable Information,* OIG is incorporating the routine use language into this new system of records as part of our normal SORN review development process.

## Description of the Proposed System of Records

The ''Administrative Files, HHS/OS/OIG/OCIG'' system will specifically enable OCIG to access and maintain records for the purpose of archiving and filing records. The system will house various types of records and will permit OCIG to search and retrieve memoranda, opinions, correspondence, testimony, and other writings relevant to the functioning of OCIG.

## Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits OIG to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purposes for which the information was collected. Any such disclosure of data is known as a routine use. Accordingly, we are proposing to establish the following routine use disclosures of records maintained in the system:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event of litigation, information from the system of records may be disclosed to the Department of Justice, to a judicial or administrative tribunal, opposing counsel, and witnesses, in the course of proceedings involving HHS, any HHS employee (where the matter pertains to the employee's official duties), or the United States, or any agency thereof where the litigation is likely to affect HHS, or HHS is a party or has an interest in the litigation and the use of the information is relevant and necessary to the litigation.

3. In the event that a system of records maintained by OIG to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

4. In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

5. A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

6. The system of records may be disclosed to student volunteers and other individuals performing functions for the Department but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.

7. A record may be disclosed to appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

## Safeguards

OIG has safeguards in place for authorized users and monitors users to ensure against unauthorized use. The system will conform to all applicable Federal laws and regulations, and Federal, HHS, and OIG policies and standards as they relate to information security and data privacy.

## Effects of the Proposed System of Records on Individual Rights

OIG proposes to establish this system of records in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records notice.

OIG will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of applicants whose data are maintained in the system. OIG will make disclosures from the proposed system in accordance with the Privacy Act. OIG does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

This proposed new system of records will not otherwise increase access to these records.

**Daniel R. Levinson,**
*Inspector General.*

**09–90–0076**

**SYSTEM NAME:**

Administrative Files, HHS/OS/OIG/OCIG.

**SYSTEM CLASSIFICATION:**

None.

**LOCATION:**

Office of Inspector General (OIG), Department of Health and Human Services, Room 5527, Wilbur J. Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The system consists of information concerning persons mentioned in opinions, memoranda, correspondence, testimony, and other writings relevant to the Office of Counsel to the Inspector General (OCIG) within OIG. Individuals mentioned may include:

- Staff members and authors whose names are mentioned in memoranda, opinions, correspondence, testimony, and other writings;
- Individuals addressed in memoranda, opinions, correspondence, testimony, and other writings;
- Attendees at meetings and conferences described in memoranda, opinions, correspondence, testimony, and other writings; or
- Any individual identified in connection with questions presented to OCIG.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system will consist of memoranda, opinions, correspondence, testimony, and other writings.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The authority for maintaining this system is found in the various statutes, regulations, rules, or orders pertaining to the subject matter of the memoranda, opinions, correspondence, testimony, and other writings of the office, (*e.g.*, Inspector General Act (5 U.S.C. App.)).

**PURPOSE(S):**

In accordance with the Inspector General Act of 1978, this system is maintained for the purposes of maintaining a searchable record of memoranda, opinions, correspondence, testimony, and other writings.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

a. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

b. In the event of litigation, information from the system of records may be disclosed to the Department of Justice, to a judicial or administrative tribunal, opposing counsel, and witnesses, in the course of proceedings involving HHS, any HHS employee (where the matter pertains to the employee's official duties), or the United States, or any agency thereof where the litigation is likely to affect HHS, or HHS is a party or has an interest in the litigation and the use of the information is relevant and necessary to the litigation.

c. In the event that a system of records maintained by OIG to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

d. In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

e. A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

f. The system of records may be disclosed to student volunteers and other individuals performing functions for the Department but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.

g. A record may be disclosed to appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored in electronic form and paper, and maintained under secure conditions in limited access areas. Computer server containing files are locked in controlled-access rooms. Laptops that may contain files are protected with whole-disk encryption.

**RETRIEVABILITY:**

These records are retrievable by certain personal identifiers, such as by name, of the individuals covered by this system of record.

**SAFEGUARDS:**

Office buildings in which these records are maintained are secured by a variety of security systems. The computer terminals used to access the records are secured with passwords, encryptions, and other security devices, comply with all relevant computer security procedures, are kept in rooms that are locked at the close of the business day, and are generally accessible only to OCIG staff. Paper files are stored in locked cabinets, in locked offices and are accessible to limited members of OCIG on a need-to-know basis.

**RETENTION AND DISPOSAL**

These records may be maintained for an indefinite duration.

**SYSTEM MANAGER(S) AND ADDRESS:**

The agency official responsible for the system policies and practices outlined above is: The Chief Counsel, Office of Counsel to the Inspector General, Department of Health and Human Services, Wilbur J. Cohen Building, Room 5527, 330 Independence Avenue, SW., Washington, DC 20201.

**NOTIFICATION PROCEDURE:**

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the system manager.

**RECORD ACCESS PROCEDURES:**

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. (These access procedures are in accordance with Department regulations (45 CFR 5b.5(a)(2).)

**CONTESTING RECORD PROCEDURES:**

Contact the official at the address in the System Manager(s) and Address section above, and reasonably identify

the record and specify the information to be contested and corrective action sought with supporting justification. (These procedures are in accordance with Department Regulations (45 CFR 5b.7).)

**RECORD SOURCES CATEGORIES:**

The information for this system is obtained through a number of sources including OCIG attorney, exchange of legal pleadings, documents, formal and informal discovery, program offices and component agencies, private attorneys, State and local governments, their agencies and instrumentalities, and officers of other Federal agencies and the individuals involved.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. E8–7034 Filed 4–3–08; 8:45 am]

**BILLING CODE 4152–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Toxicology Program (NTP); NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM); Non-Animal Methods and Approach for Evaluating Eye Irritation Potential for Antimicrobial Cleaning Products (AMCPs): Request for Nominations for an Independent Expert Panel and Submission of Relevant Data

**AGENCY:** National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

**ACTION:** Request nominations for an independent expert panel and submission of relevant data.

**SUMMARY:** At the request of the U.S. Environmental Protection Agency (EPA), the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) is planning to assess the validation status of a proposed non-animal approach for evaluating the eye irritation potential of AMCPs that meets hazard classification and labeling requirements. On behalf of ICCVAM, NICEATM requests:

1. Nominations of expert scientists to serve as members of an independent peer review panel.

2. Submission of relevant data and information on AMCPs or related substances obtained from (1) human testing or experience including reports from accidental exposures, (2) rabbits using the standard eye test or the low volume eye test (LVET), and (3) *in vitro* test methods for assessing ocular irritation, such as the Bovine Corneal Opacity and Permeability (BCOP) test, the Cytosensor Microphysiometer (CM) test, and the EpiOcular test, and data supporting the accuracy and reproducibility of these methods.

**DATES:** Submit nominations and data by May 19, 2008. Data submitted after this date will be considered in the evaluation, if feasible.

**ADDRESSES:** Submit nominations and data to Dr. William S. Stokes, NICEATM Director, NIEHS, P.O. Box 12233, MD EC–17, Research Triangle Park, NC, 27709, (fax) 919–541–0947 (e-mail) *niceatm@niehs.nih.gov.* Courier address: NICEATM, 79 T.W. Alexander Drive, Building 4401, Room 3128, Research Triangle Park, NC, 27709. Responses can also be submitted electronically via the ICCVAM–NICEATM Web site (*http://iccvam.niehs.nih.gov/contact/FR_pubcomment.htm*).

**FOR FURTHER INFORMATION CONTACT:** Other correspondence should be directed to Dr. William S. Stokes (919–541–2384 or *niceatm@niehs.nih.gov*).

**SUPPLEMENTARY INFORMATION:**

### Background

In June 2004, the EPA Office of Pesticide Programs informed NICEATM that they were developing, via a subgroup of the Pesticide Program Dialogue Committee, a non-animal assessment approach for evaluating eye irritation potential and labeling requirements for AMCPs. Subsequently, the EPA in collaboration with the Alternative Testing Working Group (ATWG) developed a non-animal approach for this limited group of products. The ATWG is comprised of seven consumer product companies (Clorox, Colgate Palmolive, Dial, EcoLabs, Johnson Diversey, Procter & Gamble, and SC Johnson). The Institute for *In Vitro* Sciences, Inc. (IIVS), which coordinated the EPA–ATWG collaboration, performed additional testing to complete parallel sets of *in vivo* and *in vitro* data, and prepared a background review document (BRD) describing the final approach. More information concerning this submission is available at: *http://iccvam.niehs.nih.gov/methods/ocutox/AMCP.htm.*

In January 2008, IIVS submitted the BRD, *An In Vitro Approach for EPA Toxicity Labeling of Anti-Microbial Cleaning Products,* to NICEATM. The EPA and the ATWG requested that NICEATM and ICCVAM use information within the BRD to conduct a technical review of the proposed approach to determine whether ICCVAM could assure the EPA, with a reasonable degree of certainty, that the approach would be useful for making labeling decisions for AMCPs that appropriately inform the user.

NICEATM and ICCVAM are now conducting a preliminary evaluation of the submission to determine its completeness and adherence to ICCVAM guidelines, which are available at *http://iccvam.niehs.nih.gov/SuppDocs/SubGuidelines/SD_subg034508.pdf.* If they decide to move forward with an evaluation, NICEATM and ICCVAM will convene an independent peer review panel to review the validation status of the proposed approach.

### Request for Nominations of Scientific Experts

NICEATM requests nominations of scientists with relevant knowledge and experience to serve on the peer review panel should it be convened. Areas of relevant expertise include, but are not limited to:

- Biostatistics
- Human and veterinary ophthalmology, with an emphasis on evaluation and treatment of chemical injuries
- *In vivo* ocular toxicity testing
- *In vitro* ocular toxicology
- Test method validation

Each nomination should include the nominee's name, affiliation, contact information (i.e., mailing address, e-mail address, telephone and fax numbers), curriculum vitae, and a brief summary of relevant experience and qualifications. Nominations previously submitted to NICEATM in response to an earlier request for scientific experts for a possible peer panel review of *in vitro* ocular test methods used to evaluate AMCPs (**Federal Register** Vol. 70, No. 53, pp. 13512–13513, available at *http://iccvam.niehs.nih.gov*) do not need to be resubmitted.

### Request for Data

NICEATM invites the submission of relevant data and information on AMCPs or related substances obtained from (1) human testing or experience including reports from accidental exposures, (2) rabbits using the standard eye test or the low volume eye test (LVET), and (3) *in vitro* test methods for assessing ocular irritation, such as the Bovine Corneal Opacity and Permeability (BCOP) test, the Cytosensor Microphysiometer (CM) test, and the EpiOcular test, including data supporting the accuracy and reproducibility of these methods.

Although data can be accepted at any time, data received by May 19, 2008 will be considered during the ICCVAM

evaluation process. Relevant data received after this date will be considered during the ICCVAM evaluation process, if feasible. All information submitted in response to this notice will be made publicly available and may be incorporated into future NICEATM and ICCVAM reports and publications as appropriate.

When submitting data, please reference this **Federal Register** notice and provide appropriate contact information (name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization, as applicable).

NICEATM prefers that data be submitted as copies of pages from study notebooks and/or study reports, if available. Raw data and analyses available in electronic format may also be submitted. Each submission for a substance should preferably include the following information, as appropriate:

- Common and trade name
- Chemical Abstracts Service Registry Number (CASRN)
- Chemical and/or product class
- Commercial source
- *In vivo* or *in vitro* test protocol used
- Individual animal or *in vitro* responses at each observation time (i.e., raw data)
- The extent to which the study complied with national/international Good Laboratory Practice (GLP) guidelines
- Date and testing organization
- Physical and chemical properties (e.g. molecular weight, pH, water solubility, etc.)

**Background Information on ICCVAM and NICEATM**

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that use or generate toxicological information. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological test methods that more accurately assess the safety and hazards of chemicals and products and that refine, reduce, and replace animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 2851–3, available at (*http://iccvam.niehs.nih.gov/docs/about_docs/PL106545.pdf*) established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM administers ICCVAM and provides scientific and operational support for ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of Federal agencies. Additional information about ICCVAM and NICEATM is available on the following Web site: *http://iccvam.niehs.nih.gov.*

Dated: March 24, 2008.

**Samuel H. Wilson,**

*Acting Director, National Institute of Environmental Health Sciences and National Toxicology Program.*

[FR Doc. E8–6969 Filed 4–3–08; 8:45 am]

BILLING CODE 4140–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control; Special Emphasis Panel (SEP): Identification, Surveillance and Control of Vector-Borne and Zoonotic Infectious Diseases in Uganda, Funding Opportunity Announcement (FOA) CK08–004

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

*Time and Date:* 12 p.m.–2 p.m., May 16, 2008 (Closed).

*Place:* Teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters to be Discussed:* The meeting will include the review, discussion, and evaluation of ''Identification, Surveillance and Control of Vector-Borne and Zoonotic Infectious Diseases in Uganda,'' FOA CK08–004.

*Contact Person for More Information:* Shoukat Qari, D.V.M., PhD, Scientific Review Administrator, Strategic Science and Program Unit, Office of the Director, Coordinating Center for Infectious Diseases, CDC, 1600 Clifton Road, Mailstop C–19, Atlanta, GA, Telephone (404) 639–8942.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 28, 2008.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E8–7032 Filed 4–3–08; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control; Special Emphasis Panel (SEP): Mining Occupational Safety and Health Research (R01), Request for Application (RFA) OH08–003

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

*Times and Dates:* 5 p.m.–7 p.m., May 7, 2008 (Closed). 8 a.m.–5 p.m., May 8, 2008 (Closed). 8 a.m.–5 p.m., May 9, 2008 (Closed).

*Place:* Radisson Plaza-Warwick Hotel Philadelphia, 1701 Locust Street #411, Philadelphia, PA 19103.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters to be Discussed:* The meeting will include the review, discussion, and evaluation of ''Mining Occupational Safety and Health Research (R01), RFA OH08–003.''

*Contact Person for More Information:* Charles N. Rafferty, PhD, Assistant Director for Review and Policy Office of Extramural Programs, CDC, 1600 Clifton Road, NE., Mailstop E74, Atlanta, GA 30333, Telephone: (404) 498–2530.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 28, 2008.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E8–7033 Filed 4–3–08; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### National Center for Injury Prevention and Control Initial Review Group (NCIPC/IRG)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announce the following meeting of the aforementioned committee:

*Times and Date:* 8:45 a.m.–9:15 a.m., April 22, 2008 (Open); 9:15 a.m.–6 p.m., April 22, 2008 (Closed).

*Place:* Doubletree Hotel Atlanta-Buckhead, 3342 Peachtree Rd., NE., Atlanta, GA 30326, 404–231–1234.

*Status:* Portions of the meetings will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to section 10(d) of Public Law 92–463.

*Purpose:* This group is charged with providing advice and guidance to the Secretary, Department of Health and Human Services, and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focuses on prevention and control.

*Matters To Be Discussed:* The meeting will include the review, discussion, and evaluation of individual research grant and cooperative agreement applications submitted in response to Fiscal Year 2008 Requests for Applications related to the following individual research announcement: RFA–CE–08–002, Biomechanics Applications to the Reduction of Traumatic Injuries and Their Severity.

Agenda items are subject to change as priorities dictate.

For More Information Contact: Jane Suen, DrPH, MS, Executive Secretary, NCIPC IRG, CDC, 4770 Buford Highway, NE., M/S F–62, Atlanta, Georgia 30341, telephone 770–488–4281.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 31, 2008.

**Lorenzo J. Falgiano,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E8–7031 Filed 4–3–08; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### President's Committee for People With Intellectual Disabilities; Notice of Meeting

**AGENCY:** Administration for Children and Families, HHS.

**ACTION:** Notice of Quarterly Meeting.

**DATES:** April 24, 2008, from 9 a.m. to 5 p.m. EST, and April 25, 2008, from 8:30 a.m. to 3 p.m. EST. The meeting will be open to the public.

**ADDRESSES:** The meeting will be held in Room 705A of the Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201. Individuals who would like to participate via conference call may do so by dialing 888–913–9965, passcode: PCPID. Individuals who will need accommodations for a disability in order to attend the meeting (e.g., sign language interpreting services, assistive listening devices, materials in alternative format such as large print or Braille) should notify MJ Karimi via e-mail at *Madjid.KarimieAsl@ACF.hhs.gov*, or via telephone at 202–619–0634, no later than April 18, 2008. PCPID will attempt to meet requests made after that date but cannot guarantee availability. All meeting sites are barrier free.

*Agenda:* PCPID will meet to finalize the 2008 Report to the President and to continue work on the 2009 Report to the President.

*Additional Information:* For further information, please contact Sally D. Atwater, Executive Director, President's Committee for People with Intellectual Disabilities, The Aerospace Center, Second Floor West, 370 L'Enfant Promenade, SW., Washington, DC 20447. Telephone: 202–619–0634. Fax: 202–205–9591. E-mail: *satwater@acf.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** PCPID acts in an advisory capacity to the President and the Secretary of Health and Human Services on a broad range of topics relating to programs, services and supports for persons with intellectual disabilities. PCPID, by Executive Order, is responsible for evaluating the adequacy of current practices in programs, services and supports for persons with intellectual disabilities, and for reviewing legislative proposals that impact the quality of life experienced by citizens with intellectual disabilities and their families.

Dated: March 26, 2008.

**Sally D. Atwater,**

*Executive Director, President's Committee for People with Intellectual Disabilities.*

[FR Doc. E8–7072 Filed 4–3–08; 8:45 am]

BILLING CODE 4184–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAAA.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, NIAAA.

*Date:* May 28–30, 2008.

*Time:* May 28, 2008, 8:15 a.m. to 6 p.m.

*Agenda:* To review and evaluate the Laboratory of Physiological Studies (LPS).

*Place:* National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

*Time:* May 29, 2008, 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate the Laboratory of Neurogenetics (LNG).

*Place:* National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

*Time:* May 30, 2008, 8 a.m. to 1 p.m.

*Agenda:* To review and evaluate the Laboratory of Epidemiology and Biometry (LEB).

*Place:* National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

*Contact Person:* Trish Scullion, Chief of Administrative Branch, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Room 3061, Rockville, MD 20852, 301–443–6076.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: March 28, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–6978 Filed 4–3–08; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Council on Alcohol Abuse and Alcoholism.

*Date:* June 4–5, 2008.

*Closed:* June 4, 2008, 5:30 p.m. to 7:30 p.m.

*Agenda:* To review and evaluate grant applications

*Place:* National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

*Open:* June 5, 2008, 9 a.m. to 3:30 p.m.

*Agenda:* Program reports and presentations.

*Place:* National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

*Contact Person:* Abraham P. Bautista, PhD, Executive Secretary, National Institute On Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm. 3039, Rockville, MD 20852, 301–443–9737, *bautistaa@mail.nih.gov*.

Information is also available on the Institutes/Centers home page: *silk.nih.gov/silklniaaal/aboutiroster.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: March 27, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–6973 Filed 4–3–08; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Complementary and Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Complementary and Alternative Medicine, Special Emphasis Panel, Loan Repayment Program.

*Date:* April 23, 2008.

*Time:* 11 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892.

*Contact Person:* Laurie Friedman Donze, PhD, Scientific Review Administrator, Office of Scientific Review, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–402–1030, *donzel@mail.nih.gov*.

This notice is being published less than 15 days prior to meeting due to scheduling conflicts.

Dated: March 27, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–6974 Filed 4–3–08; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Eye Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Eye Institute Special Emphasis Panel Training and Scientific Meeting Reviews.

*Date:* April 14, 2008.

*Time:* 8:30 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814

*Contact Person:* Samuel Rawlings, PhD, Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892–9300, 301–451–2020, *rawlings@nei.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Eye Institute Special Emphasis Panel, Scientific Meeting Reviews.

*Date:* April 22, 2008.

*Time:* 10:30 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Samuel Rawlings, PhD, Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892–9300, 301–451–2020, *rawlings@nei.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93867, Vision Research, National Institutes of Health, HHS)

Dated: March 27, 2008

**Jennifer Spaeth**

*Director, Office of Federal Advisory Committee Policy*

[FR Doc. E8–6976 Filed 4–3–08; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel, 2008 NIH Director's Pioneer Awards.

*Date:* April 23, 2008.

*Time:* 7:00 a.m. to 11:59 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Virtual Meeting)

*Contact Person:* Shan R. McCollough, Program Analyst, Division of Genetics and Developmental Biology, National Institute of General Medical Sciences, Building 45, Center Drive, Room 3A513F, Bethesda, MD 20892, 301–594–3555, *smccollough@nigms.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 27, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–6975 Filed 4–3–08; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Aging, Abeta, Proteotoxicity, and Neurodegeneration

*Date:* April 21, 2008

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications

*Place:* National Institute of Health, Gate Way Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. (Telephone Conference Call)

*Contact Person:* Alicja L. Markowska, PhD, DSC, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov*.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Patient Registry.

*Date:* May 6, 2008.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Bethesda, MD 20892. (Telephone Conference Call)

*Contact Person:* Louise L. Hsu, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–7705, *hsul@exmur.nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 27, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–6977 Filed 4–3–08; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group Bioengineering, Technology and Surgical Sciences Study Section.

*Date:* May 19–20, 2008.

*Time:* 8 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Dharam S. Dhindsa, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *dhindsad@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Nanotechnology.

*Date:* May 28–29, 2008.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

*Contact Person:* Joseph D. Mosca, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 435–2344, *moscajos@csr.nih.gov*.

*Name of Committee:* Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group Biomedical Imaging, Technology Study Section.

*Date:* June 2–3, 2008.

*Time:* 8:00 a.m to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Alexandria Old Town, 1767 King Street Salon B, Alexandria, VA 22314.

*Contact Person:* Lee Rosen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosenl@csr.nih.gov*.

*Name of Committee:* Oncological Sciences Integrated Review Group Radiation, Therapeutics and Biology Study Section.

*Date:* June 2–3, 2008.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Bo Hong, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge

Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–435–5879, *hongb@csr.nih.gov*.

*Name of Committee:* Oncological Sciences Integrated Review Group Basic Mechanisms of Cancer Therapeutics Study Section.
*Date:* June 2–3, 2008.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Doubletree Hotel Washington, DC., 1515 Rhode Island Avenue, NW., Washington, DC 20005.
*Contact Person:* Lambratu Rahman, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–451–3493, *rahmanl@csr.nih.gov*.

*Name of Committee:* Biobehavioral and Behavioral Processes Integrated
Review Group Motor Function, Speech and Rehabilitation Study Section.
*Date:* June 2, 2008.
*Time:* 8 a.m to 6 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.
*Contact Person:* Weijia Ni, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov*.

*Name of Committee:* Oncological Sciences Integrated Review Group Tumor, Cell Biology Study Section.
*Date:* June 2–3, 2008.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* The Ritz-Carlton Hotel, Tysons Corner, 1700 Tysons Boulevard, McLean, VA 22102.
*Contact Person:* Angela Y. Ng, PhD, MBA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817) Bethesda, MD 20892, 301–435–1715, *ngacsr.nih.gov*.

*Name of Committee:* Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Pregnancy and Neonatology Study Section.
*Date:* June 2–3, 2008.
*Time:* 8 a.m. to 3 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
*Contact Person:* Michael Knecht, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046, *knechtm@csr.nih.gov*.

*Name of Committee:* Biology of Development and Aging Integrated Review Group, Cellular Mechanisms in Aging and Development Study Section.
*Date:* June 2–3, 2008.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
*Contact Person:* James P. Harwood, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7840, Bethesda, MD 20892, 301–435–1256, *harwoodj@csr.nih.gov*.

*Name of Committee:* Respiratory Sciences Integrated Review Group, Respiratory Integrative Biology and Translational Research Study Section.
*Date:* June 2–3, 2008.
*Time:* 8:30 a.m. to 12 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
*Contact Person:* Everett E. Sinnett, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, *sinnett@nih.gov*.

*Name of Committee:* Brain Disorders and Clinical Neuroscience Integrated Review Group, Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.
*Date:* June 2–3, 2008.
*Time:* 8:30 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC 20037.
*Contact Person:* Julius Cinque, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252, *cinquej@csr.nih.gov*.

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurotoxicology and Alcohol Study Section.
*Date:* June 3–4, 2008.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102.
*Contact Person:* Brian Hoshaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7844, Bethesda, MD 20892, 301–435–1033, *hoshawb@csrnih.gov*.

*Name of Committee:* Cell Biology Integrated Review Group, Molecular and Integrative Signal Transduction Study Section.
*Date:* June 3–4, 2008.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
*Contact Person:* Raya Mandler, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, (301) 402–8228, *rayam@csr.nih.gov*.

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Somatosensory and Chemosensory Systems Study Section.
*Date:* June 3–4, 2008.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102.
*Contact Person:* Daniel R. Kenshalo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, 301–435–1255, *kenshalod@csr.nih.gov*.

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience, Integrated Review Group Sensorimotor Integration Study Section.
*Date:* June 3, 2008.
*Time:* 8 a.m to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
*Contact Person:* John Bishop, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250, *bishopj@csr.nih.gov*.

*Name of Committee:* Health of the Population Integrated Review Group, Nursing Science: Adults and Older Adults Study Section.
*Date:* June 4–5, 2008.
*Time:* 8 a.m. to 3 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Crowne Plaza, Tysons Corner, 1960 Chain Bridge Road, McLean, VA 22102.
*Contact Person:* Gertrude K. McFarland, FAAN, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, (301) 435–1784, *mcfarlag@csr.nih.gov*.

*Name of Committee:* Cell Biology Integrated Review Group Cell Structure, and Function Study Section.
*Date:* June 4–5, 2008.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Latham Hotel, 3000 M Street, NW., Washington, DC 20007.
*Contact Person:* Alexandra M. Ainsztein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, 301–451–3848, *ainsztea@csr.nih.gov*.

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience, Integrated Review Group, Biological Rhythms and Sleep Study Section.
*Date:* June 4, 2008.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.
*Contact Person:* Michael Selmanoff, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1208,

MSC 7844, Bethesda, MD 20892, 301–435–1119, *mselmanoff@csr.nih.gov*.

*Name of Committee:* Digestive Sciences Integrated Review Group, Xenobiotic and Nutrient Disposition and Action Study Section.
*Date:* June 4, 2008.
*Time:* 8 a.m. to 6 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
*Contact Person:* Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2174, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov*.

*Name of Committee:* Biological Chemistry and Macromolecular Biophysics, Integrated Review Group Synthetic and Biological Chemistry A Study Section.
*Date:* June 4–5, 2008.
*Time:* 8 a.m. to 6 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Marriott Marina del Rey Hotel, 4100 Admiralty Way, Marina del Rey, CA 90292.
*Contact Person:* Mike Radtke, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728, *radtkem@csr.nih.gov*.

*Name of Committee:* Biological Chemistry and Macromolecular Biophysics, Integrated Review Group Macromolecular Structure and Function A Study Section.
*Date:* June 5–6, 2008.
*Time:* 8 a.m. to 6 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Doubletree Hotel Washington, DC, 1515 Rhode Island Avenue, NW., Washington, DC 20005.
*Contact Person:* David R. Jollie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892, (301)–435–1722, *jollieda@csr.nih.gov*.

*Name of Committee:* Cell Biology Integrated Review Group Intercellular, Interactions Study Section.
*Date:* June 5–6, 2008.
*Time:* 8 a.m. to 5:30 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* George Washington University Inn, 824 New Hampshire Avenue, NW., Washington, DC 20037.
*Contact Person:* David Balasundaram, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov*.

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience, Integrated Review Group Neuroendocrinology, Neuroimmunology, and Behavior Study Section.
*Date:* June 5–6, 2008.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.
*Contact Person:* Michael Selmanoff, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892, 301–435–1119, *mselmanoff@csr.nih.gov*.

*Name of Committee:* Biological Chemistry and Macromolecular Biophysics, Integrated Review Group Macromolecular Structure and Function B Study Section.
*Date:* June 5–6, 2008.
*Time:* 8 a.m. to 6 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
*Contact Person:* Nancy Lamontagne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *lamontan@csr.nih.gov*.

*Name of Committee:* Biological Chemistry and Macromolecular Biophysics, Integrated Review Group Macromolecular Structure and Function C Study Section.
*Date:* June 5–6, 2008.
*Time:* 8 a.m. to 6 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* The Hotel Rouge, 1315 16th Street, NW., Washington, DC 20036.
*Contact Person:* Arnold Revzin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7824, Bethesda, MD 20892, (301) 435–1153, *revzina@csr.nih.gov*.

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience, Integrated Review Group Neurobiology of Learning and Memory Study Section.
*Date:* June 5–6, 2008.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
*Contact Person:* Bernard F. Driscoll, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *driscolb@csr.nih.gov*.

*Name of Committee:* Biobehavioral and Behavioral Processes Integrated, Review Group Adult Psychopathology and Disorders of Aging Study Section.
*Date:* June 5–6, 2008.
*Time:* 8 a.m. to 12 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.
*Contact Person:* Alfonso R. Latoni, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, 301–435–0913, *latonia@csr.nih.gov*.

*Name of Committee:* Cell Biology Integrated Review Group Cellular, Signaling and Regulatory Systems Study Section.
*Date:* June 5–6, 2008.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
*Contact Person:* Elena Smirnova, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–435–1236, *smirnove@csr.nih.gov*.

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience, Integrated Review Group, Auditory System Study Section.
*Date:* June 5–6, 2008.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102.
*Contact Person:* Lynn E. Luethke, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 435–1018, *luethkel@csr.nih.gov*.

*Name of Committee:* Brain Disorders and Clinical Neuroscience Integrated Review Group, Clinical Neuroplasticity and Neurotransmitters Study Section.
*Date:* June 5–6, 2008.
*Time:* 8 a.m. to 6 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Melrose Hotel, 2430 Pennslyvania Avenue, NW., Washington, DC 20037.
*Contact Person:* Suzan Nadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov*.

*Name of Committee:* Genes, Genomes, and Genetics Integrated Review Group, Molecular Genetics C Study Section.
*Date:* June 5–6, 2008.
*Time:* 8:30 a.m. to 3 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
*Contact Person:* Barbara Whitmarsh, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, 301/435–4511, *whitmarshb@csr.nih.gov*.

*Name of Committee:* Health of the Population Integrated Review Group, Community-Level Health Promotion Study Section.
*Date:* June 5–6, 2008.
*Time:* 9 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hotel Helix, 1430 Rhode Island Avenue, NW., Washington, DC 20005.
*Contact Person:* William N. Elwood, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3162, MSC 7770, Bethesda, MD 20892, 301/435–1503, *elwoodwi@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Collaborative Applications in Adult Psychopathology and Disorders of Aging.

*Date:* June 6, 2008.

*Time:* 12 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

*Contact Person:* Alfonso R. Latoni, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, 301–435–0913, *latonia@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 27, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–6979 Filed 4–3–08; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HOMELAND SECURITY

### BioWatch Filter Holder Log

**AGENCY:** Office of Health Affairs, Weapons of Mass Destruction (WMD) and Biodefense, Chem/Bio Early Detection Division, DHS.

**ACTION:** 60-Day Notice and request for comments; New Information Collection Request.

**SUMMARY:** The Department of Homeland Security, Office of Health Affairs, WMD and Biodefense, has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

**DATES:** Comments are encouraged and will be accepted until June 3, 2008. This process is conducted in accordance with 5 CFR 1320.1.

**ADDRESSES:** Comments and questions about this Information Collection Request should be forwarded to the Division Director, Chem/Bio Early Detection Division, Attn: Dr. Jeffrey Stiefel for the Department of Homeland Security, Office of Health Affairs, WMD and Biodefense, Washington, DC 20528.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jeffrey Stiefel, 703–647–8056 or 202–254–6076 (this is not a toll free number).

**SUPPLEMENTARY INFORMATION:** The Department of Homeland Security (DHS), Office of Health Affairs, WMD and Biodefense, Chem/Bio Early Detection Division requires the collection of information by BioWatch jurisdictions. The BioWatch Program operates aerosol collector equipment in approximately 30 U.S. jurisdictions to monitor for the presence of organisms that may be related to the deliberate release of a select subset of biological threat agents. Information is collected in writing by a representative of a BioWatch jurisdiction (either an employee, or a contractor) responsible for installing and removing filters from aerosol collection devices and transporting them to local laboratories for sample analysis. A standard filter holder log is completed for each sample and is archived by the BioWatch jurisdiction for a year. The DHS BioWatch Program provides financial support to the participating jurisdictions for the cost of collection and laboratory analysis activities, including the preparation of the filter holder log and other documentation. The Federal Bureau of Investigation (FBI) has instructed the BioWatch Program to maintain a written record for each collected filter sample to support law enforcement activities, including criminal prosecution in the case of a deliberate release of a biological agent. Collection of written records establishing chain of custody for samples containing biological agents and toxins for the purpose of evidence in a criminal proceeding is consistent with the ''Best Evidence Rule'', Section 1002, of the Federal Rules of Evidence. The FBI instruction to the BioWatch program is consistent with Section 7 of the FBI Quality Assurance Guidelines for Laboratories Performing Microbial Forensic Work, produced by the members of the Scientific Working Group on Microbial Genetics and Forensics (SWGMGF). Such recordkeeping supports mandatory reporting requirements directed by The APHIS Interim Final Rule 7 CFR part 331, Possession, Use, and Transfer of Biological Agents and Toxins; and the CDC Interim Final Rule 42 CFR part 73, Possession, Use, and Transfer of Select Agents and Toxins, *inter alia.*

The Office of Management and Budget is particularly interested in comments which:

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, including the validity of the methodology and assumptions used;

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

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

**Analysis**

*Agency:* Department of Homeland Security, Office of Health Affairs, WMD and Biodefense, Chem/Bio Early Detection Division.

*Title:* BioWatch Filter Holder Log.

*DHS Form:* 9500 (5/07).

*OMB Number:* 1601—NEW.

*Frequency:* Once daily.

*Affected Public:* State, Local, and Tribal Governments.

*Number of Respondents:* 522.

*Estimated Time per Respondent:* 1 minute.

*Total Burden Hours:* 3,182 annual burden hours.

*Total Burden Cost (capital/startup):* $0.00.

*Total Burden Cost (operating/maintaining):* $144,770.

Dated: March 28, 2008.

**Charles Armstrong,**

*Acting Chief Information Officer.*

[FR Doc. E8–7077 Filed 4–3–08; 8:45 am]

**BILLING CODE 4410–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the National Protection and Programs Directorate Submission for Reinstatement of a Previously Approved Collection OMB Control Number 1670–0005

**AGENCY:** Office of the National Protection and Programs Directorate, DHS.

**ACTION:** 30-day notice and request for comments; Reinstatement of a previously approved information collection OMB Control Number 1670–0005.

**SUMMARY:** The Department of Homeland Security (DHS) invites the general public and other federal agencies the opportunity to comment on approved information collection request (ICR) OMB 1670–0005, Telecommunications Service Priority (TSP) System. As required by the Paperwork Reduction Act of 1995. The information collection

was previously published in the **Federal Register** on January 25, 2008 at 73 FR 4613 allowing for a 60-day public comment period. No comments were received on this existing information collection. The purpose of this notice is to allow an additional 30 days for public comments.

**DATES:** Written comments should be received on or before May 5, 2008 to be assured consideration.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street, NW., Washington, DC, 20503, Attention: Nathan Lesser, Desk Officer, Department of Homeland Security/NPPD or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Nathan Lesser, Desk Officer, Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street, NW., Washington, DC, 20503, or via electronic mail to *oira_submission@omb.eop.gov*.

**SUPPLEMENTARY INFORMATION:**

The Office of Management and Budget is particularly interested in comments which:

(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, including the validity of the methodology and assumptions used;

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

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

## Analysis

*Agency:* Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection.

*Title:* Telecommunications Service Priority (TSP) System.

*OMB Number:* 1670–0005.

*Frequency:* On occasion.

*Affected Public:* Individuals or households; businesses or other for-profit; not-for-profit institutions; State, local or tribal government; foreign government.

*Estimated Number of Respondents:* 28,161.

*SF314 Revalidation for Service Users:* 304.

*SF315 Request for Service Users:* 27,000.

*SF317 Action Appeal for Service Users:* 1.

*SF318 Service Confirmation for Service Vendors:* 428.

*SF319 Service Reconciliation for Service Vendors:* 428.

*Estimated Time per Respondent:*

*SF314 Revalidation for Service Users:* 45 minutes.

*SF315 Request for Service Users:* 15 minutes.

*SF317 Action Appeal for Service Users:* 25 minutes.

*SF318 Service Confirmation for Service Vendors:* 45 minutes.

*SF319 Service Reconciliation for Service Vendors:* 1.0 Hour.

*Total Burden Hours:* 7,727.25.

*SF314 Revalidation for Service Users:* 228 hours.

*SF315 Request for Service Users:* 6,750 hours.

*SF317 Action Appeal for Service Users:* 25 minutes.

*SF318 Service Confirmation for Service Vendors:* 321 hours.

*SF319 Service Reconciliation for Service Vendors:* 428 hours.

*Total Burden Cost:* (capital/startup): $0.

*Total Burden Cost:* (operating/maintaining): $0.

*Description:* The Telecommunications Service Priority (TSP) System provide telecommunications service vendors a means of identifying the services that should be restored or provisioned first in the event of an emergency or crisis; and the legal protection giving a preference to certain users over others. This critical aspect of the TSP program benefits government at all levels as well as the general public.

Dated: March 28, 2008.

**Matt Coose,**

*Acting Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.*

[FR Doc. E8–7081 Filed 4–3–08; 8:45 am]

BILLING CODE 4410–10–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG–2007–0042]**

### Application for the Containerized Cargo Ship ATLANTIC COMPASS, review for inclusion in the Shipboard Technology Evaluation Program; Draft Environmental Assessment

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of availability and request for public comments.

**SUMMARY:** The Coast Guard announces the availability of the Draft Environmental Assessment (DEA) for the containerized cargo ship ATLANTIC COMPASS. The DEA describes the ATLANTIC COMPASS' application for the Shipboard Technology Evaluation Program (STEP) Ballast Water Treatment System demonstration initiative. The DEA for the ATLANTIC COMPASS also addresses effects on the human and natural environments from installing, testing, and using the Ecochlor, Inc. ballast water treatment system as the vessel operates in U.S. waters.

**DATES:** Comments and related materials must reach the Docket Management Facility on or before June 3, 2008.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2007–0042 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(3) *Hand Delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on the Draft Environmental Assessment (DEA) or would like a copy of the DEA, please contact LCDR Brian Moore, telephone 202–372–1434 or e-mail: *brian.e.moore@uscg.mil.* If you have questions on viewing or submitting material to the docket, please call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to submit comments and related materials about the Draft Environmental Assessment (DEA) described in this notice. Persons submitting comments should include their names and addresses, the docket number for this notice (USCG–2007–0042), and the reasons for each comment. You may submit your comments and materials by mail, hand delivery, fax, or electronic means to the Docket Management Facility listed under **ADDRESSES**. If you choose to submit them by mail or hand delivery, submit them in an unbound format, no longer than 8½ by 11 inches, and suitable for copying and electronic filing. If you submit them by mail and would like to know if they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and materials received during the comment period.

**Public Meetings**

We do not intend to hold any public meetings in association with this DEA.

**Legislative and Regulatory History**

In the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as reauthorized, and as amended by the National Invasive Species Act of 1996, Public Law 101–646 and Public Law 104–332, respectively, Congress directed the Coast Guard to prevent introduction of aquatic nonindigenous species (NIS) from ballast water discharged by ships. 16 U.S.C. 4711. To achieve this objective, the Coast Guard wrote new regulations in 33 CFR 151, subparts C and D. 58 FR 18330, April 8, 1993, and 69 FR 44952, July 28, 2004, respectively.

On December 8, 2004, the Coast Guard published a notice in the **Federal Register** announcing its Shipboard Technology Evaluation Program (STEP) for experimental shipboard ballast water treatment systems. 69 FR 1802. The program goal is to promote development of alternatives to ballast water exchange as a means of preventing invasive species entering U.S. waters through ships' ballast water. The comments we received support testing prototype treatment equipment and developing effective and practicable standards for approving this equipment.

In accordance with the National Environmental Policy Act of 1969 (Section 102(2)(c)), as implemented by the Council of Environmental Quality regulations in 40 CFR parts 1500–1508 and Coast Guard Commandant Instruction M16475.1D, ''National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts'', the Coast Guard prepared a Programmatic Environmental Assessment (PEA) for the STEP to evaluate the environmental impacts from installing and operating a limited number of prototype ballast water treatment systems. 69 FR 71068. The PEA can be found in docket USCG–2001–9267. That PEA addresses potential effects to the natural and human environments including fish, marine mammals, invertebrates, microorganisms and plankton, submerged and emergent species, threatened and endangered species, and essential fish habitat. It also requires each system to be evaluated for localized effects on the ports and waterways where a vessel involved in the program operates.

We request your comments on the potential impacts of installing, using, and testing the Ecochlor, Inc. ballast water treatment system on the containerized cargo ship ATLANTIC COMPASS, as analyzed in the DEA. We also request your comments on sources of data, reference material, or other information not included in the DEA. Your comments will be considered in preparing a Final Environmental Assessment for the ATLANTIC COMPASS.

Dated: March 25, 2008.

**J.G. Lantz,**

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

[FR Doc. E8–6988 Filed 4–3–08; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG–2007–0040]**

### Application for the Cruise Ship CORAL PRINCESS, Review for Inclusion in the Shipboard Technology Evaluation Program; Draft Environmental Assessment

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of availability and request for public comments.

**SUMMARY:** The Coast Guard announces the availability of the Draft Environmental Assessment (DEA) for the cruise ship CORAL PRINCESS. The DEA describes the CORAL PRINCESS' application for the Shipboard Technology Evaluation Program (STEP) Ballast Water Treatment System demonstration initiative. The DEA for the CORAL PRINCESS also addresses effects on the human and natural environments from installing, testing, and using the Hyde Marine, Inc. ballast water treatment system as the vessel operates in U.S. waters.

**DATES:** Comments and related materials must reach the Docket Management Facility on or before June 3, 2008.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2007–0040 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

(3) *Hand Delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on the Draft Environmental Assessment (DEA) or would like a copy of the DEA, please contact LCDR Brian Moore, telephone 202–372–1434 or e-mail: *brian.e.moore@uscg.mil.* If you have questions on viewing or submitting material to the docket, please call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to submit comments and related materials about the Draft Environmental Assessment (DEA) described in this notice. Persons submitting comments should include their names and addresses, the docket number for this notice (USCG–2007–0040), and the reasons for each comment. You may submit your comments and materials by mail, hand delivery, fax, or electronic means to the Docket Management Facility listed under **ADDRESSES**. If you choose to submit them by mail or hand delivery, submit them in an unbound format, no longer than 8½ by 11 inches, and suitable for copying and electronic filing. If you submit them by mail and would like to know if they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and materials received during the comment period.

**Public Meetings**

We do not intend to hold any public meetings in association with this DEA.

**Legislative and Regulatory History**

In the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as reauthorized, and as amended by the National Invasive Species Act of 1996, Public Law 101–646 and Public Law 104–332, respectively, Congress directed the Coast Guard to prevent introduction of aquatic nonindigenous species (NIS) from ballast water discharged by ships. 16 U.S.C 4711. To achieve this objective, the Coast Guard wrote new regulations in 33 CFR 151, subparts C and D. 58 FR 18330, April 8, 1993, and 69 FR 44952, July 28, 2004, respectively.

On December 8, 2004, the Coast Guard published a notice in the **Federal Register** announcing its Shipboard Technology Evaluation Program (STEP) for experimental shipboard ballast water treatment systems. 69 FR 1802. The program goal is to promote development of alternatives to ballast water exchange as a means of preventing invasive species entering U.S. waters through ships' ballast water. The comments we received support testing prototype treatment equipment and developing effective and practicable standards for approving this equipment.

In accordance with the National Environmental Policy Act of 1969 (Section 102(2)(c)), as implemented by the Council of Environment Quality regulations in 40 CFR parts 1500–1508 and Coast Guard Commandant Instruction M16475.1D, ''National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts'', the Coast Guard prepared a Programmatic Environmental Assessment (PEA) for the STEP to evaluate the environmental impacts from installing and operating a limited number of prototype ballast water treatment systems. 69 FR 71068. The PEA can be found in docket USCG–2001–9267. That PEA addresses potential effects to the natural and human environments including fish, marine mammals, invertebrates, microorganisms and plankton, submerged and emergent species, threatened and endangered species, and essential fish habitat. It also requires each system to be evaluated for localized affects on the ports and waterways where a vessel involved in the program operates.

We request your comments on the potential impacts of installing, using, and testing the Hyde Marine, Inc. Ballast Water Treatment System on the cruise ship CORAL PRINCESS, as analyzed in the DEA. We also request your comments on sources of data, reference material, or other information not included in the DEA. Your comments will be considered in preparing a Final Environmental Assessment for the CORAL PRINCESS.

Dated: March 25, 2008.

**J.G. Lantz,**

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

[FR Doc. E8–6995 Filed 4–3–08; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG–2007–0041]**

### Application for the Integrated Tug and Barge MOKU PAHU, Review for Inclusion in the Shipboard Technology Evaluation Program; Draft Environmental Assessment

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of availability and request for public comments.

**SUMMARY:** The Coast Guard announces the availability of the Draft Environmental Assessment (DEA) for the integrated tug and barge MOKU PAHU. The DEA describes the MOKU PAHU's application for the Shipboard Technology Evaluation Program (STEP) Ballast Water Treatment System demonstration initiative. The DEA for the MOKU PAHU also addresses effects on the human and natural environments from installing, testing, and using the Ecochlor Inc. ballast water treatment system as the vessel operates in U.S. waters.

**DATES:** Comments and related materials must reach the Docket Management Facility on or before June 3, 2008.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2007–0041 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(3) *Hand Delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on the Draft Environmental Assessment (DEA) or would like a copy of the DEA, please contact LCDR Brian Moore, telephone 202–372–1434 or e-mail: *brian.e.moore@uscg.mil.* If you have questions on viewing or submitting material to the docket, please call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to submit comments and related materials about the Draft Environmental Assessment (DEA) described in this notice. Persons submitting comments should include their names and addresses, the docket number for this notice (USCG–2007–0041), and the reasons for each comment. You may submit your comments and materials by mail, hand delivery, fax, or electronic means to the Docket Management Facility listed under **ADDRESSES**. If you choose to submit them by mail or hand delivery, submit them in an unbound format, no longer than 8½ by 11 inches, and suitable for copying and electronic filing. If you submit them by mail and would like to know if they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and materials received during the comment period.

**Public Meetings**

We do not intend to hold any public meetings in association with this DEA.

**Legislative and Regulatory History**

In the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as reauthorized, and as amended by the National Invasive Species Act of 1996, Public Law 101–646 and Public Law 104–332, respectively, Congress directed the Coast Guard to prevent introduction of aquatic nonindigenous species (NIS) from ballast water discharged by ships. 16 U.S.C. 4711. To achieve this objective, the Coast Guard wrote new regulations in 33 CFR 151, subparts C and D. 58 FR 18330, April 8, 1993, and 69 FR 44952, July 28, 2004, respectively.

On December 8, 2004, the Coast Guard published a notice in the **Federal Register** announcing its Shipboard Technology Evaluation Program (STEP) for experimental shipboard ballast water treatment systems. 69 FR 1802. The

program goal is to promote development of alternatives to ballast water exchange as a means of preventing invasive species entering U.S. waters through ships' ballast water. The comments we received support testing prototype treatment equipment and developing effective and practicable standards for approving this equipment.

In accordance with the National Environmental Policy Act of 1969 (Section 102(2)(c)), as implemented by the Council of Environment Quality regulations in 40 CFR parts 1500–1508 and Coast Guard Commandant Instruction M16475.1D, ''National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts'', the Coast Guard prepared a Programmatic Environmental Assessment (PEA) for the STEP to evaluate the environmental impacts from installing and operating a limited number of prototype ballast water treatment systems. 69 FR 71068. The PEA can be found in docket USCG–2001–9267. That PEA addresses potential effects to the natural and human environments including fish, marine mammals, invertebrates, microorganisms and plankton, submerged and emergent species, threatened and endangered species, and essential fish habitat. It also requires each system to be evaluated for localized affects on the ports and waterways where a vessel involved in the program operates.We request your comments on the potential impacts of installing, using, and testing the Echoclor, Inc. ballast water treatment system on the cruise ship MOKU PAHU, as analyzed in the DEA. We also request your comments on sources of data, reference material, or other information not included in the DEA. Your comments will be considered in preparing a Final Environmental Assessment for the MOKU PAHU.

Dated: March 25, 2008.

**J.G. Lantz,**

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

[FR Doc. E8–6986 Filed 4–3–08; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2008–0003]**

### Notification of the Imposition of Conditions of Entry for Certain Vessels Arriving to the United States, Cuba

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice.

**SUMMARY:** The Coast Guard announces that effective anti-terrorism measures are not in place in the ports of Cuba and that it will impose conditions of entry on vessels arriving from that country.

**DATES:** The policy announced in this notice will become effective April 18, 2008.

**ADDRESSES:** This notice will be available for inspection and copying at the Docket Management Facility at the U.S. Department of Transportation, Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call Mr. Michael Brown, International Port Security Evaluation Division, Coast Guard, telephone 202–372–1081. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

#### Background and Purpose

Section 70110 of the Maritime Transportation Security Act provides that the Secretary of Homeland Security may impose conditions of entry on vessels requesting entry into the United States arriving from ports that are not maintaining effective anti-terrorism measures. The Coast Guard has been delegated the authority by the Secretary to carry out the provisions of this section. The Docket contains previous notices imposing or removing conditions of entry on vessels arriving from certain countries and those conditions of entry and the countries they pertain to remain in effect unless modified by this notice.

The Coast Guard has determined that ports in Cuba are not maintaining effective anti-terrorism measures. Inclusive to this determination is an assessment that Cuba presents significant risk of introducing instruments of terror into international maritime commerce. Accordingly, effective April 18, 2008 the Coast Guard will impose the following conditions of entry on vessels that visited ports in Cuba during their last five port calls. Vessels must:

- Implement measures per the ship's security plan equivalent to Security Level 2 while in a port in Cuba;
- Ensure that each access point to the ship is guarded and that the guards have total visibility of the exterior (both landside and waterside) of the vessel while the vessel is in ports in Cuba. Guards may be provided by the ship's crew, however additional crewmembers should be placed on the ship if necessary to ensure that limits on maximum hours of work are not exceeded and/or minimum hours of rest are met, or provided by outside security forces approved by the ship's master and Company Security Officer;
- Attempt to execute a Declaration of Security while in port in Cuba;
- Log all security actions in the ship's log;
- Report actions taken to the cognizant U.S. Coast Guard Captain of the Port prior to arrival into U.S. waters; and
- Ensure that each access point to the ship is guarded by armed, private security guards and that they have total visibility of the exterior (both landside and waterside) of the vessel while in U.S. ports. The number and position of the guards has to be acceptable to the cognizant Coast Guard Captain of the Port.

With this notice, the current list of countries not maintaining effective anti-terrorism measures is as follows: Cameroon, Cuba, Equatorial Guinea, Guinea-Bissau, Indonesia, Iran, Liberia, Mauritania and Syria.

Dated: March 28, 2008.

**Rear Admiral David Pekoske,**

*USCG, Assistant Commandant For Operations.*

[FR Doc. E8–6985 Filed 4–3–08; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–3284–EM]**

### Texas; Amendment No. 1 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of Texas (FEMA–3284–EM), dated March 14, 2008, and related determinations.

**EFFECTIVE DATE:** March 24, 2008.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of an emergency declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of March 14, 2008.

Aransas, Austin, Bee, Bowie, Brazos, Calhoun, Cameron, Dallam, Dallas, Donley, Fayette, Freestone, Galveston, Grimes, Hardin, Harrison, Hartley, Henderson, Jasper, Leon, Newton, Ochiltree, Panola, Sabine, San Patricio, Scurry, Shackelford, Sherman, Smith, Titus, Tyler, and Upshur Counties for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs, 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–7040 Filed 4–3–08; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–3284–EM]**

### Texas; Amendment No. 2 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of Texas (FEMA–3284–EM), dated March 14, 2008, and related determinations.

**EFFECTIVE DATE:** March 27, 2008.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of an emergency declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of March 14, 2008.

Bastrop, Cottle, El Paso, Franklin, Kenedy, Lee, Madison, McMullen, Red River, Roberts, Webb, Wood, and Yoakum Counties for emergency protective measures, (Category B), limited to direct Federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidential Declared Disaster Assistance to Individuals and Households—Other Needs, 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–7016 Filed 4–3–08; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1751–DR]**

### Arkansas; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1751–DR), dated March 26, 2008, and related determinations.

**EFFECTIVE DATE:** March 26, 2008.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated March 26, 2008, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Arkansas resulting from severe storms, tornadoes, and flooding beginning on March 18, 2008, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program in the designated areas and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs), unless you determine that the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 CFR § 206.33(d).

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. § 777. If Other Needs Assistance and Hazard Mitigation are later warranted, Federal funding under these programs will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Kenneth M. Riley, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arkansas to have been affected adversely by this declared major disaster:

Baxter, Benton, Boone, Carroll, Clay, Conway, Craighead, Crawford, Faulkner, Franklin, Fulton, Greene, Hot Spring, Howard, Independence, Izard, Jackson, Johnson, Lawrence, Logan, Madison, Marion, Nevada, Newton, Pope, Randolph, Scott, Searcy, Sharp, Stone, Van Buren, Washington, White, Woodruff, and Yell Counties for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–7042 Filed 4–3–08; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1750–DR]**

### Georgia; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Georgia (FEMA–1750–DR), dated March 20, 2008, and related determinations.

**EFFECTIVE DATE:** March 20, 2008.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated March 20, 2008, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Georgia resulting from severe storms and tornadoes during the period of March 14–16, 2008, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Georgia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of further Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Elizabeth Turner, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Georgia to have been affected adversely by this declared major disaster:

Fulton County for Individual Assistance.

All counties within the State of Georgia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–7044 Filed 4–3–08; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1749–DR]**

### Missouri; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–1749–DR), dated March 19, 2008, and related determinations.

**EFFECTIVE DATE:** March 19, 2008.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated March 19, 2008, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Missouri resulting from severe storms and flooding beginning on March 17, 2008, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program in the designated areas, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs), unless you determine that the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 CFR 206.33(d).

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. If Other Needs Assistance and Hazard

Mitigation are later warranted, Federal funding under these programs will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Michael L. Parker, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Missouri to have been affected adversely by this declared major disaster:

Audrain, Barry, Barton, Boone, Bollinger, Butler, Callaway, Camden, Cape Girardeau, Carter, Cedar, Christian, Cole, Cooper, Crawford, Dade, Dallas, Dent, Douglas, Dunklin, Franklin, Gasconade, Greene, Hickory, Howard, Howell, Iron, Jasper, Jefferson, Laclede, Lawrence, Lincoln, Madison, Maries, McDonald, Miller, Mississippi, Montgomery, Moniteau, Morgan, New Madrid, Newton, Oregon, Osage, Ozark, Pemiscot, Perry, Phelps, Pike, Polk, Pulaski, Reynolds, Ripley, St. Charles, St. Clair, St. Francois, St. Louis, Ste. Genevieve, Shannon, Scott, Stoddard, Stone, Taney, Texas, Vernon, Warren, Washington, Wayne, Webster, and Wright Counties and the Independent City of St. Louis for emergency protective measures (Category B), limited to direct Federal assistance under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–7021 Filed 4–3–08; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1751–DR]**

### Arkansas; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Arkansas (FEMA–1751–DR), dated March 26, 2008, and related determinations.

**EFFECTIVE DATE:** March 28, 2008.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Arkansas is hereby amended to include Individual Assistance and the Hazard Mitigation Grant Program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 26, 2008.

The counties of Baxter, Benton, Independence, Jackson, Lawrence, Logan, Madison, Marion, Randolph, Stone, and Woodruff for Individual Assistance (already designated for emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program.)

The counties of Baxter, Boone, Carroll, Fulton, Izard, Johnson, Madison, Scott, Searcy, and Yell for Public Assistance, including direct Federal assistance, (already designated for emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program.)

All counties in the State of Arkansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidential Declared Disaster Assistance to Individuals and Households—Other Needs, 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–7041 Filed 4–3–08; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1750–DR]**

### Georgia; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–1750–DR), dated March 20, 2008, and related determinations.

**EFFECTIVE DATE:** March 22, 2008.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Georgia is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 20, 2008.

Bartow, Burke, DeKalb, Floyd, Jefferson, and Polk Counties for Individual Assistance.

Burke and Jefferson Counties for Public Assistance.

Fulton County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially

Declared Disasters); 97.039, Hazard Mitigation Grant.)

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–7045 Filed 4–3–08; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1749–DR]**

### Missouri; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–1749–DR), dated March 19, 2008, and related determinations.

**EFFECTIVE DATE:** March 27, 2008.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Missouri is hereby amended to include Individual Assistance and the Hazard Mitigation Grant Program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 19, 2008.

The counties of Bollinger, Carter, Christian, Franklin, Greene, Iron, Jasper, Jefferson, Maries, Newton, Oregon, Phelps, Pulaski, Reynolds, St. Francois, Stone, Texas, Washington, and Wayne for Individual Assistance (already designated for emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program.)

All jurisdictions in the State of Missouri are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–7047 Filed 4–3–08; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1746–DR]**

### Kentucky; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–1746–DR), dated February 21, 2008, and related determinations.

**EFFECTIVE DATE:** March 20, 2008.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 21, 2008.

Allen, Bath, Hardin, Meade, Mercer, Monroe, Muhlenberg, and Shelby Counties for Public Assistance (already designated for Individual Assistance.)

Adair, Carlisle, Casey, Estill, Franklin, Grayson, Metcalfe, and Morgan Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidential Declared Disaster Assistance to Individuals and Households—Other Needs, 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–7024 Filed 4–3–08; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

**[Docket Nos. TSA–2006–24191; Coast Guard–2006–24196]**

### Transportation Worker Identification Credential (TWIC); Enrollment Dates for the Ports of Ponce, PR and Laporte, TX

**AGENCY:** Transportation Security Administration; United States Coast Guard; DHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Homeland Security (DHS) through the Transportation Security Administration (TSA) issues this notice of the dates for the beginning of the initial enrollment for the Transportation Worker Identification Credential (TWIC) for the Ports of Ponce, PR and Laporte, TX.

**DATES:** TWIC enrollment begins in Ponce, PR on April 17, 2008, and in Laporte, TX on April 23, 2008.

**ADDRESSES:** You may view published documents and comments concerning the TWIC Final Rule, identified by the docket numbers of this notice, using any one of the following methods.

(1) Searching the Federal Docket Management System (FDMS) Web page at *http://www.regulations.gov*;

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*; or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

**FOR FURTHER INFORMATION CONTACT:** James Orgill, TSA–19, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220. Transportation Threat Assessment and Credentialing (TTAC), TWIC Program, (571) 227–4545; e-mail: *credentialing@dhs.gov.*

### Background

The Department of Homeland Security (DHS), through the United States Coast Guard and the Transportation Security Administration

(TSA), issued a joint final rule (72 FR 3492; January 25, 2007) pursuant to the Maritime Transportation Security Act (MTSA), Public Law 107–295, 116 Stat. 2064 (November 25, 2002), and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109–347 (October 13, 2006). This rule requires all credentialed merchant mariners and individuals with unescorted access to secure areas of a regulated facility or vessel to obtain a TWIC. In this final rule, on page 3510, TSA and Coast Guard stated that a phased enrollment approach based upon risk assessment and cost/benefit would be used to implement the program nationwide, and that TSA would publish a notice in the **Federal Register** indicating when enrollment at a specific location will begin and when it is expected to terminate.

This notice provides the start dates for TWIC initial enrollment at the Ports of Ponce, PR on April 17, 2008 and Laporte, TX on April 23, 2008. The Coast Guard will publish a separate notice in the **Federal Register** indicating when facilities within the Captain of the Port Zone San Juan, including those in the Port of Ponce, and Captain of the Port Zone Ohio Valley, including those in the Port of Laporte must comply with the portions of the final rule requiring TWIC to be used as an access control measure. That notice will be published at least 90 days before compliance is required.

To obtain information on the pre-enrollment and enrollment process, and enrollment locations, visit TSA's TWIC Web site at *http://www.tsa.gov/twic.*

Issued in Arlington, Virginia, on April 1, 2008.

**Rex Lovelady,**

*Program Manager, TWIC, Office of Transportation Threat Assessment and Credentialing, Transportation Security Administration.*

[FR Doc. E8–7101 Filed 4–3–08; 8:45 am]

**BILLING CODE 9110–05–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form I–9, Extension of an Existing Information Collection, Comment Request

**ACTION:** 30-Day Notice of Information Collection Under Review: Form I–9, Employment Eligibility Verification; OMB Control No. 1615–0047.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 14, 2008, at 73 FR 2270, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 5, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529.

Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *kastrich@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0047. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

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

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

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

**Overview of This Information Collection**

(1) *Type of Information Collection: Extension of a currently approved information collection.*

(2) *Title of the Form/Collection:* Employment Eligibility Verification.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–9. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form was developed to facilitate compliance with section 274A of the Immigration and Nationality Act, which prohibits the knowing employment of unauthorized aliens. The information collected is used by employers or by recruiters for enforcement of provisions of immigration laws that are designed to control the employment of unauthorized aliens.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* This figure was derived by multiplying the number of respondents (78,000,000) × frequency of response (1) × hour per response (9 minutes or 0.15 hours). The annual recordkeeping burden is added to the total annual reporting burden which is based on 20,000,000 recordkeepers at (3 minutes or .05 hours) per filing.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 12,700,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529, (202) 272–8377.

Dated: April 1, 2008.

**Stephen Tarragon,**

*Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. E8–7127 Filed 4–3–08; 8:45 am]

**BILLING CODE 4410–10–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5186–N–14]**

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**EFFECTIVE DATE:** April 4, 2008.

**FOR FURTHER INFORMATION CONTACT:** Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 27, 2008.

**Mark R. Johnston,**

*Deputy Assistant Secretary for Special Needs.*

[FR Doc. E8–6717 Filed 4–3–08; 8:45 am]

**BILLING CODE 4210–67–M**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R4–R–2008–N0029; 40136–1265–0000–S3]**

### Piedmont National Wildlife Refuge, Jones and Jasper Counties, GA

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) and associated National Environmental Policy Act (NEPA) documents for Piedmont National Wildlife Refuge. We provide this notice in compliance with our CCP policy to advise other agencies, Tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process.

**DATES:** To ensure consideration, we must receive your written comments by May 5, 2008. A public scoping meeting will be held on April 1, 2008. The location of the meeting will be announced in the local media.

**ADDRESSES:** Comments, questions, and requests for information should be sent to: Laura Housh, Regional Planner, Okefenokee National Wildlife Refuge, Route 2, Box 3330, Folkston, GA 31537; Telephone: 912/496–7366, Ext. 244; Fax: 912/496–3332; or electronic mail: *laura_housh@fws.gov*. You may find additional information concerning the refuge at the refuge's Internet site: *http://www.fws.gov/piedmont*.

**FOR FURTHER INFORMATION CONTACT:** Carolyn Johnson, Assistant Refuge Manager, Piedmont National Wildlife Refuge; Telephone: 478/986–5441; or electronic mail: *Carolyn_Johnson@fws.gov*.

**SUPPLEMENTARY INFORMATION:**

#### Introduction

With this notice, we initiate our process for developing a CCP for Piedmont National Wildlife Refuge in Jones and Jasper Counties, GA.

This notice complies with our CCP policy to (1) advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this refuge; and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

#### Background

*The CCP Process*

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing to the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

Each unit of the National Wildlife Refuge System is established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the National Wildlife Refuge System mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives for the best possible conservation approach to this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the National Wildlife Refuge System.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of Piedmont National Wildlife Refuge. Special mailings, newspaper articles, and other media outlets will be used to announce opportunities for input throughout the planning process.

We will conduct the environmental assessment in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 et seq.); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Piedmont National Wildlife Refuge was established in 1939 as a ''combination wildlife and game-management demonstration area'' to demonstrate that wildlife could be restored on worn out, eroded lands. By implementing good forest management practices, the 35,000-acre refuge hosts loblolly pines on the ridges, with hardwoods found along creek bottoms and in scattered upland coves. The refuge is in central Georgia, approximately 25 miles north of Macon, and 18 miles east of Forsyth. The refuge is primarily forested and provides

habitat for the endangered red-cockaded woodpecker and associated wildlife species of concern. Prescribed burning and timber thinning are used to ensure that quality pine habitat is maintained for red-cockaded woodpeckers, neotropical migratory songbirds, and other native wildlife. Hardwood stands provide excellent habitat for neotropical migratory songbirds, turkeys, squirrels, and other woodland wildlife. Open fields, maintained by burning and mowing, provide feeding and nesting areas for many species of birds and mammals. Numerous clear-flowing creeks and beaver ponds provide wetlands for waterfowl and other wildlife.

**Public Availability of Comments**

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: February 8, 2008.

**Cynthia K. Dohner,**

*Acting Regional Director.*

[FR Doc. E8–7000 Filed 4–3–08; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the current list of 562 tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes. The list is updated from the notice published on March 22, 2007 (72 FR 13648).

**FOR FURTHER INFORMATION CONTACT:** Daisy West, Bureau of Indian Affairs, Division of Tribal Government Services, Mail Stop 4513–MIB, 1849 C Street, NW., Washington, DC 20240. Telephone number: (202) 513–7641.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103–454; 108 Stat. 4791, 4792), and in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below is a list of federally acknowledged tribes in the contiguous 48 states and in Alaska.

One tribe became recognized since the last publication. The Mashpee Wampanoag Tribe was acknowledged under 25 CFR part 83. The final determination for Federal acknowledgment became effective on May 23, 2007. The list also contains several tribal name changes and corrections. To aid in identifying tribal name changes, the tribe's former name is included with the new tribal name. To aid in identifying corrections, the tribe's previously listed name is included with the tribal name. We will continue to list the tribe's former or previously listed name for several years before dropping the former or previously listed name from the list.

The listed entities are acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations, and obligations of such tribes. We have continued the practice of listing the Alaska Native entities separately solely for the purpose of facilitating identification of them and reference to them given the large number of complex Native names.

Dated: March 25, 2008.

**Carl J. Artman,**

*Assistant Secretary—Indian Affairs.*

**Indian Tribal Entities Within the Contiguous 48 States Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs**

Absentee-Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona
Alabama-Coushatta Tribes of Texas
Alabama-Quassarte Tribal Town, Oklahoma
Alturas Indian Rancheria, California
Apache Tribe of Oklahoma
Arapahoe Tribe of the Wind River Reservation, Wyoming
Aroostook Band of Micmac Indians of Maine
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
Augustine Band of Cahuilla Indians, California (formerly the Augustine Band of Cahuilla Mission Indians of the Augustine Reservation)
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Bay Mills Indian Community, Michigan
Bear River Band of the Rohnerville Rancheria, California
Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria, California
Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California
Big Sandy Rancheria of Mono Indians of California
Big Valley Band of Pomo Indians of the Big Valley Rancheria, California
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria, California
Bridgeport Paiute Indian Colony of California
Buena Vista Rancheria of Me-Wuk Indians of California
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon
Cabazon Band of Mission Indians, California
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Nation of Oklahoma
Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
Cahto Indian Tribe of the Laytonville Rancheria, California
California Valley Miwok Tribe, California (formerly the Sheep Ranch Rancheria of Me-Wuk Indians of California)
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of California:
  Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California
  Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California
Catawba Indian Nation (aka Catawba Tribe of South Carolina)
Cayuga Nation of New York
Cedarville Rancheria, California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
Cherokee Nation, Oklahoma
Cheyenne and Arapaho Tribes, Oklahoma (formerly the Cheyenne-Arapaho Tribes of Oklahoma)
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota

Chickasaw Nation, Oklahoma
Chicken Ranch Rancheria of Me-Wuk Indians of California
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Chitimacha Tribe of Louisiana
Choctaw Nation of Oklahoma
Citizen Potawatomi Nation, Oklahoma
Cloverdale Rancheria of Pomo Indians of California
Cocopah Tribe of Arizona
Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho
Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Comanche Nation, Oklahoma
Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Chehalis Reservation, Washington
Confederated Tribes of the Colville Reservation, Washington
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of the Siletz Reservation, Oregon
Confederated Tribes of the Umatilla Reservation, Oregon
Confederated Tribes of the Warm Springs Reservation of Oregon
Confederated Tribes and Bands of the Yakama Nation, Washington
Coquille Tribe of Oregon
Cortina Indian Rancheria of Wintun Indians of California
Coushatta Tribe of Louisiana
Cow Creek Band of Umpqua Indians of Oregon
Cowlitz Indian Tribe, Washington
Coyote Valley Band of Pomo Indians of California
Crow Tribe of Montana
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Death Valley Timbi-Sha Shoshone Band of California
Delaware Nation, Oklahoma
Dry Creek Rancheria of Pomo Indians of California
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Eastern Band of Cherokee Indians of North Carolina
Eastern Shawnee Tribe of Oklahoma
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
Elk Valley Rancheria, California
Ely Shoshone Tribe of Nevada
Enterprise Rancheria of Maidu Indians of California
Ewiiaapaayp Band of Kumeyaay Indians, California
Federated Indians of Graton Rancheria, California
Flandreau Santee Sioux Tribe of South Dakota
Forest County Potawatomi Community, Wisconsin
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Fort Bidwell Indian Community of the Fort Bidwell Reservation of California
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon
Fort McDowell Yavapai Nation, Arizona
Fort Mojave Indian Tribe of Arizona, California & Nevada
Fort Sill Apache Tribe of Oklahoma
Gila River Indian Community of the Gila River Indian Reservation, Arizona
Grand Traverse Band of Ottawa and Chippewa Indians, Michigan
Greenville Rancheria of Maidu Indians of California
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
Guidiville Rancheria of California
Habematolel Pomo of Upper Lake, California (formerly the Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California)
Hannahville Indian Community, Michigan
Havasupai Tribe of the Havasupai Reservation, Arizona
Ho-Chunk Nation of Wisconsin
Hoh Indian Tribe of the Hoh Indian Reservation, Washington
Hoopa Valley Tribe, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians of the Hopland Rancheria, California
Houlton Band of Maliseet Indians of Maine
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
Ione Band of Miwok Indians of California
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Jackson Rancheria of Me-Wuk Indians of California
Jamestown S'Klallam Tribe of Washington
Jamul Indian Village of California
Jena Band of Choctaw Indians, Louisiana
Jicarilla Apache Nation, New Mexico
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the Kalispel Reservation, Washington
Karuk Tribe of California
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Nation, Oklahoma
Keweenaw Bay Indian Community, Michigan
Kialegee Tribal Town, Oklahoma
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma
Kickapoo Traditional Tribe of Texas
Kiowa Indian Tribe of Oklahoma
Klamath Tribes, Oregon (formerly the Klamath Indian Tribe of Oregon)
Kootenai Tribe of Idaho
La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
Little River Band of Ottawa Indians, Michigan
Little Traverse Bay Bands of Odawa Indians, Michigan
Lower Lake Rancheria, California
Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation, California
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington
Lower Sioux Indian Community in the State of Minnesota
Lummi Tribe of the Lummi Reservation, Washington
Lytton Rancheria of California
Makah Indian Tribe of the Makah Indian Reservation, Washington
Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Mashantucket Pequot Tribe of Connecticut
Mashpee Wampanoag Tribe, Massachusetts
Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan
Mechoopda Indian Tribe of Chico Rancheria, California

Menominee Indian Tribe of Wisconsin
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Miami Tribe of Oklahoma
Miccosukee Tribe of Indians of Florida
Middletown Rancheria of Pomo Indians of California
Minnesota Chippewa Tribe, Minnesota (Six component reservations:
Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)
Mississippi Band of Choctaw Indians, Mississippi
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Modoc Tribe of Oklahoma
Mohegan Indian Tribe of Connecticut
Mooretown Rancheria of Maidu Indians of California
Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington
Muscogee (Creek) Nation, Oklahoma
Narragansett Indian Tribe of Rhode Island
Navajo Nation, Arizona, New Mexico & Utah
Nez Perce Tribe, Idaho (previously listed as Nez Perce Tribe of Idaho)
Nisqually Indian Tribe of the Nisqually Reservation, Washington
Nooksack Indian Tribe of Washington
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Northfork Rancheria of Mono Indians of California
Northwestern Band of Shoshoni Nation of Utah (Washakie)
Nottawaseppi Huron Band of the Potawatomi, Michigan (formerly the Huron Potawatomi, Inc.)
Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan)
Omaha Tribe of Nebraska
Oneida Nation of New York
Oneida Tribe of Indians of Wisconsin
Onondaga Nation of New York
Osage Nation, Oklahoma (formerly the Osage Tribe)
Ottawa Tribe of Oklahoma
Otoe-Missouria Tribe of Indians, Oklahoma
Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)
Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California
Pala Band of Luiseno Mission Indians of the Pala Reservation, California
Pascua Yaqui Tribe of Arizona
Paskenta Band of Nomlaki Indians of California
Passamaquoddy Tribe of Maine
Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
Pawnee Nation of Oklahoma
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
Penobscot Tribe of Maine
Peoria Tribe of Indians of Oklahoma
Picayune Rancheria of Chukchansi Indians of California
Pinoleville Pomo Nation, California (formerly the Pinoleville Rancheria of Pomo Indians of California)
Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias)
Poarch Band of Creek Indians of Alabama
Pokagon Band of Potawatomi Indians, Michigan and Indiana
Ponca Tribe of Indians of Oklahoma
Ponca Tribe of Nebraska
Port Gamble Indian Community of the Port Gamble Reservation, Washington
Potter Valley Tribe, California (formerly the Potter Valley Rancheria of Pomo Indians of California)
Prairie Band of Potawatomi Nation, Kansas
Prairie Island Indian Community in the State of Minnesota
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Santo Domingo, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Puyallup Tribe of the Puyallup Reservation, Washington
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Quapaw Tribe of Indians, Oklahoma
Quartz Valley Indian Community of the Quartz Valley Reservation of California
Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona
Quileute Tribe of the Quileute Reservation, Washington
Quinault Tribe of the Quinault Reservation, Washington
Ramona Band or Village of Cahuilla Mission Indians of California
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Red Lake Band of Chippewa Indians, Minnesota
Redding Rancheria, California
Redwood Valley Rancheria of Pomo Indians of California
Reno-Sparks Indian Colony, Nevada
Resighini Rancheria, California
Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
Robinson Rancheria of Pomo Indians of California
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Round Valley Indian Tribes of the Round Valley Reservation, California
Rumsey Indian Rancheria of Wintun Indians of California
Sac & Fox Tribe of the Mississippi in Iowa
Sac & Fox Nation of Missouri in Kansas and Nebraska
Sac & Fox Nation, Oklahoma
Saginaw Chippewa Indian Tribe of Michigan
St. Croix Chippewa Indians of Wisconsin
Saint Regis Mohawk Tribe, New York (formerly the St. Regis Band of Mohawk Indians of New York)
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
Samish Indian Tribe, Washington
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
San Juan Southern Paiute Tribe of Arizona
San Manual Band of Serrano Mission Indians of the San Manual Reservation, California
San Pasqual Band of Diegueno Mission Indians of California
Santa Rosa Indian Community of the Santa Rosa Rancheria, California
Santa Rosa Band of Cahuilla Indians, California (formerly the Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation)
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California
Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California

Santee Sioux Nation, Nebraska
Sauk-Suiattle Indian Tribe of Washington
Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Scotts Valley Band of Pomo Indians of California
Seminole Nation of Oklahoma
Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)
Seneca Nation of New York
Seneca-Cayuga Tribe of Oklahoma
Shakopee Mdewakanton Sioux Community of Minnesota
Shawnee Tribe, Oklahoma
Sherwood Valley Rancheria of Pomo Indians of California
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington
Shoshone Tribe of the Wind River Reservation, Wyoming
Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota
Skokomish Indian Tribe of the Skokomish Reservation, Washington
Skull Valley Band of Goshute Indians of Utah
Smith River Rancheria, California
Snoqualmie Tribe, Washington
Soboba Band of Luiseno Indians, California
Sokaogon Chippewa Community, Wisconsin
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Spirit Lake Tribe, North Dakota
Spokane Tribe of the Spokane Reservation, Washington
Squaxin Island Tribe of the Squaxin Island Reservation, Washington
Standing Rock Sioux Tribe of North & South Dakota
Stockbridge Munsee Community, Wisconsin
Stillaguamish Tribe of Washington
Summit Lake Paiute Tribe of Nevada
Suquamish Indian Tribe of the Port Madison Reservation, Washington
Susanville Indian Rancheria, California
Swinomish Indians of the Swinomish Reservation, Washington
Sycuan Band of the Kumeyaay Nation (formerly the Sycuan Band of Diegueno Mission Indians of California)
Table Mountain Rancheria of California
Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band)
Thlopthlocco Tribal Town, Oklahoma
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Tohono O'odham Nation of Arizona
Tonawanda Band of Seneca Indians of New York
Tonkawa Tribe of Indians of Oklahoma
Tonto Apache Tribe of Arizona
Torres Martinez Desert Cahuilla Indians, California (formerly the Torres-Martinez Band of Cahuilla Mission Indians of California)
Tule River Indian Tribe of the Tule River Reservation, California
Tulalip Tribes of the Tulalip Reservation, Washington
Tunica-Biloxi Indian Tribe of Louisiana
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
Turtle Mountain Band of Chippewa Indians of North Dakota
Tuscarora Nation of New York
Twenty-Nine Palms Band of Mission Indians of California
United Auburn Indian Community of the Auburn Rancheria of California
United Keetoowah Band of Cherokee Indians in Oklahoma
Upper Sioux Community, Minnesota
Upper Skagit Indian Tribe of Washington
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
Walker River Paiute Tribe of the Walker River Reservation, Nevada
Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches)
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma
Winnebago Tribe of Nebraska
Winnemucca Indian Colony of Nevada
Wiyot Tribe, California (formerly the Table Bluff Reservation—Wiyot Tribe)
Wyandotte Nation, Oklahoma
Yankton Sioux Tribe of South Dakota
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona
Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona
Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
Yomba Shoshone Tribe of the Yomba Reservation, Nevada
Ysleta Del Sur Pueblo of Texas
Yurok Tribe of the Yurok Reservation, California
Zuni Tribe of the Zuni Reservation, New Mexico

**Native Entities Within the State of Alaska Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs**

Native Village of Afognak (formerly the Village of Afognak)
Agdaagux Tribe of King Cove
Native Village of Akhiok
Akiachak Native Community
Akiak Native Community
Native Village of Akutan
Village of Alakanuk
Alatna Village
Native Village of Aleknagik
Algaaciq Native Village (St. Mary's)
Allakaket Village
Native Village of Ambler
Village of Anaktuvuk Pass
Yupiit of Andreafski
Angoon Community Association
Village of Aniak
Anvik Village
Arctic Village (See Native Village of Venetie Tribal Government)
Asa'carsarmiut Tribe
Native Village of Atka
Village of Atmautluak
Atqasuk Village (Atkasook)
Native Village of Barrow Inupiat Traditional Government
Beaver Village
Native Village of Belkofski
Village of Bill Moore's Slough
Birch Creek Tribe
Native Village of Brevig Mission
Native Village of Buckland
Native Village of Cantwell
Native Village of Chenega (aka Chanega)
Chalkyitsik Village
Cheesh-Na Tribe (formerly the Native Village of Chistochina)
Village of Chefornak
Chevak Native Village
Chickaloon Native Village
Chignik Bay Tribal Council (formerly the Native Village of Chignik)
Native Village of Chignik Lagoon
Chignik Lake Village
Chilkat Indian Village (Klukwan)
Chilkoot Indian Association (Haines)
Chinik Eskimo Community (Golovin)
Native Village of Chitina
Native Village of Chuathbaluk (Russian Mission, Kuskokwim)
Chuloonawick Native Village
Circle Native Community
Village of Clarks Point
Native Village of Council
Craig Community Association
Village of Crooked Creek
Curyung Tribal Council

Native Village of Deering
Native Village of Diomede (aka Inalik)
Village of Dot Lake
Douglas Indian Association
Native Village of Eagle
Native Village of Eek
Egegik Village
Eklutna Native Village
Native Village of Ekuk
Ekwok Village
Native Village of Elim
Emmonak Village
Evansville Village (aka Bettles Field)
Native Village of Eyak (Cordova)
Native Village of False Pass
Native Village of Fort Yukon
Native Village of Gakona
Galena Village (aka Louden Village)
Native Village of Gambell
Native Village of Georgetown
Native Village of Goodnews Bay
Organized Village of Grayling (aka Holikachuk)
Gulkana Village
Native Village of Hamilton
Healy Lake Village
Holy Cross Village
Hoonah Indian Association
Native Village of Hooper Bay
Hughes Village
Huslia Village
Hydaburg Cooperative Association
Igiugig Village
Village of Iliamna
Inupiat Community of the Arctic Slope
Iqurmuit Traditional Council (formerly the Native Village of Russian Mission)
Ivanoff Bay Village
Kaguyak Village
Organized Village of Kake
Kaktovik Village (aka Barter Island)
Village of Kalskag
Village of Kaltag
Native Village of Kanatak
Native Village of Karluk
Organized Village of Kasaan
Kasigluk Traditional Elders Council (formerly the Native Village of Kasigluk)
Kenaitze Indian Tribe
Ketchikan Indian Corporation
Native Village of Kiana
King Island Native Community
King Salmon Tribe
Native Village of Kipnuk
Native Village of Kivalina
Klawock Cooperative Association
Native Village of Kluti Kaah (aka Copper Center)
Knik Tribe
Native Village of Kobuk
Kokhanok Village
Native Village of Kongiganak
Village of Kotlik
Native Village of Kotzebue
Native Village of Koyuk
Koyukuk Native Village
Organized Village of Kwethluk
Native Village of Kwigillingok
Native Village of Kwinhagak (aka Quinhagak)
Native Village of Larsen Bay
Levelock Village
Lesnoi Village (aka Woody Island)
Lime Village
Village of Lower Kalskag
Manley Hot Springs Village
Manokotak Village
Native Village of Marshall (aka Fortuna Ledge)
Native Village of Mary's Igloo
McGrath Native Village
Native Village of Mekoryuk
Mentasta Traditional Council
Metlakatla Indian Community, Annette Island Reserve
Native Village of Minto
Naknek Native Village
Native Village of Nanwalek (aka English Bay)
Native Village of Napaimute
Native Village of Napakiak
Native Village of Napaskiak
Native Village of Nelson Lagoon
Nenana Native Association
New Koliganek Village Council
New Stuyahok Village
Newhalen Village
Newtok Village
Native Village of Nightmute
Nikolai Village
Native Village of Nikolski
Ninilchik Village
Native Village of Noatak
Nome Eskimo Community
Nondalton Village
Noorvik Native Community
Northway Village
Native Village of Nuiqsut (aka Nooiksut)
Nulato Village
Nunakauyarmiut Tribe (formerly the Native Village of Toksook Bay)
Native Village of Nunam Iqua (formerly the Native Village of Sheldon's Point)
Native Village of Nunapitchuk
Village of Ohogamiut
Village of Old Harbor
Orutsararmuit Native Village (aka Bethel)
Oscarville Traditional Village
Native Village of Ouzinkie
Native Village of Paimiut
Pauloff Harbor Village
Pedro Bay Village
Native Village of Perryville
Petersburg Indian Association
Native Village of Pilot Point
Pilot Station Traditional Village
Native Village of Pitka's Point
Platinum Traditional Village
Native Village of Point Hope
Native Village of Point Lay
Native Village of Port Graham
Native Village of Port Heiden
Native Village of Port Lions
Portage Creek Village (aka Ohgsenakale)
Pribilof Islands Aleut Communities of St. Paul & St. George Islands
Qagan Tayagungin Tribe of Sand Point Village
Qawalangin Tribe of Unalaska
Rampart Village
Village of Red Devil
Native Village of Ruby
Saint George Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Saint Michael
Saint Paul Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Village of Salamatoff
Native Village of Savoonga
Organized Village of Saxman
Native Village of Scammon Bay
Native Village of Selawik
Seldovia Village Tribe
Shageluk Native Village
Native Village of Shaktoolik
Native Village of Shishmaref
Native Village of Shungnak
Sitka Tribe of Alaska
Skagway Village
Village of Sleetmute
Village of Solomon
South Naknek Village
Stebbins Community Association
Native Village of Stevens
Village of Stony River
Sun'aq Tribe of Kodiak (formerly the Shoonaq' Tribe of Kodiak)
Takotna Village
Native Village of Tanacross
Native Village of Tanana
Native Village of Tatitlek
Native Village of Tazlina
Telida Village
Native Village of Teller
Native Village of Tetlin
Central Council of the Tlingit & Haida Indian Tribes
Traditional Village of Togiak
Tuluksak Native Community
Native Village of Tuntutuliak
Native Village of Tununak
Twin Hills Village
Native Village of Tyonek
Ugashik Village
Umkumiute Native Village
Native Village of Unalakleet
Native Village of Unga
Village of Venetie (See Native Village of Venetie Tribal Government)
Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)
Village of Wainwright
Native Village of Wales
Native Village of White Mountain
Wrangell Cooperative Association
Yakutat Tlingit Tribe

[FR Doc. E8–6968 Filed 4–3–08; 8:45 am]
BILLING CODE 4310–4J–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WO–320–1330–PE–24 1A]**

### Extension of Approved Information Collection, OMB Approval Number 1004–0103; Correction

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice; correction.

**SUMMARY:** The Bureau of Land Management (BLM) published a document in the **Federal Register** of March 27, 2008, requesting revision of a currently approved information collection and public comment on this information collection. The document contained an incorrect subject heading and an incorrect telephone number.

**FOR FURTHER INFORMATION CONTACT:** Alexandra Ritchie, 202–452–0388.

**Corrections**

In the **Federal Register** of March 27, 2008 [73 FR 16321], in the first column, correct the subject heading to read:

**Revision of Currently Approved Collection; OMB Approval Number 1004–0103**

In the **Federal Register** of March 27, 2008, [73 FR 16321], in the second column, correct the **FOR FURTHER INFORMATION CONTACT** telephone number for George Brown to read:

(202) 452–7765 (Commercial or FTS).

**DATES:** The correction is effective April 4, 2008.

Dated: March 31, 2008.

**Alexandra Ritchie,**

*Bureau of Land Management, Information Collection Clearance Officer.*

[FR Doc. E8–6957 Filed 4–3–08; 8:45 am]

**BILLING CODE 4310–84–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### Colorado: Filing of Plats of Survey

March 31, 2008.

**SUMMARY:** The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., March 31, 2008. All inquiries should be sent to the Colorado State Office (CO–956), Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat and field notes, in duplicate, of the dependent resurvey of the Colorado-New Mexico State Line (S. bdy.), the west boundary, and the subdivisional lines of Township 32 North, Range 19 West, of the New Mexico Principal Meridian, Colorado, were accepted on November 6, 2007.

The plat and field notes, of the dependent resurvey of the Colorado-New Mexico State Line (S. bdy.), and the survey of the subdivisional lines of Township 32 North, Range 15 West, of the New Mexico Principal Meridian, Colorado, were accepted on November 15, 2007.

The plat and/or field notes, in duplicate, of the dependent resurvey and surveys in Townships 35 and 36 North, Range 14 West, New Mexico Principal Meridian, Colorado, were accepted on November 21, 2007.

The plat, in duplicate (in two sheets), of the entire record, of the dependent resurvey and metes and bounds survey in Section 12, Township 1 North, Range 73 West, Sixth Principal Meridian, Colorado, was accepted on January 8, 2008.

The plat and field notes, in duplicate, of the dependent resurvey of two mineral surveys in Township 42 North, Range 10 West, New Mexico Principal Meridian, Colorado, were accepted on February 12, 2008.

The plat, in duplicate (in two sheets), of the entire record, of the resurvey of a portion of the subdivisional lines and a portion of M.S. 20596, Big Stake Lode, in Township 22 South, Range 71 West, Sixth Principal Meridian, Colorado, was accepted on February 20, 2008.

The plat, in duplicate, of the entire record of dependent resurvey of Mineral Survey 18826, Iron Mask No. 2 lode and the survey of a portion of the proposed center line of the Continental Divide Trail, in suspended Township 41 North, Range 6 West, New Mexico Principal Meridian, was accepted on March 6, 2008.

The plat, in duplicate, of the entire record of subdivision survey of west half of the northwest quarter of section 6, Township 33 North, Range 4 West, New Mexico Principal Meridian, Colorado, was accepted on March 31, 2008.

The supplemental plats (2), in duplicate, in section 30, T. 6 S., R. 77 W. and in section 25, T. 6 S., R. 78 W., Sixth Principal Meridian, Colorado, were accepted on March 31, 2008.

**Randall M. Zanon,**

*Chief Cadastral Surveyor for Colorado.*

[FR Doc. E8–7057 Filed 4–3–08; 8:45 am]

**BILLING CODE 4310–JB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–920–1430–ET; WYW 101899]**

### Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; WY

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management (BLM) proposes to extend the duration of Public Land Order (PLO) No. 6693 for an additional 20-year term. PLO No. 6693 withdrew 357.34 acres of public lands from settlement, sale, location, and entry under the general land laws, including the mining laws, to protect the Natural Corrals Archeological Site in Sweetwater County. This notice also gives an opportunity to comment on the proposed action and to request a public meeting.

**DATES:** Comments and requests for a public meeting must be received by July 3, 2008.

**ADDRESSES:** Comments and meeting requests should be sent to the BLM Wyoming State Director, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

**FOR FURTHER INFORMATION CONTACT:** Janet Booth, BLM Wyoming State Office, 307–775–6124, or at the above address.

**SUPPLEMENTARY INFORMATION:** The withdrawal created by PLO No. 6693 (53 FR 49664 (1988)) will expire on December 8, 2008, unless extended. The BLM has filed an application to extend PLO No. 6693 for an additional 20-year term. The withdrawal was made to protect important archeological, historical, geological, and recreational values of the Natural Corrals Archeological Site, on public lands described as follows:

**Sixth Principal Meridian**

T. 21 N., R. 101 W.

Sec. 18, lots 1, 2, and 3, W½ NE¼, E½NW¼, NE¼SW¼, and NW¼SE¼.

The areas described aggregate 357.34 acres in Sweetwater County.

The purpose of the proposed extension is to continue the withdrawal created by PLO No. 6693 for an additional 20-year term to protect the archeological, historical, geological, and recreational values of the Natural Corrals Archeological Site.

The use of a right-of-way, interagency, or cooperative agreement would not adequately constrain nondiscretionary uses which could result in permanent loss of significant values and irreplaceable resources at the site.

There are no suitable alternative sites since the lands described herein contain the resource values that need protection.

No water rights would be needed to fulfill the purpose of the requested withdrawal extension.

Records relating to the application may be examined by contacting Janet Booth at the above address or 307–775–6124.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed extension may present their views in writing to the BLM Wyoming State Director at the address noted above.

Comments, including names and street addresses of respondents, will be available for public review at the BLM Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming, during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. 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. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested persons who desire a public meeting for the purpose of being heard on the proposed extension must submit a written request to the BLM Wyoming State Director within 90 days from the date of publication of this notice. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

This withdrawal extension proposal will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

**Authority:** 43 CFR 2310.3–1.

Date: March 27, 2008.

**Michael Madrid,**

*Chief, Branch of Fluid Mineral Operations, Lands and Appraisal.*

[FR Doc. E8–7050 Filed 4–3–08; 8:45 am]

BILLING CODE 4310–22–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before March 22, 2008. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by April 21, 2008.

**J. Paul Loether,**

*Chief, National Register of Historic Places/National Historic Landmarks Program.*

**CALIFORNIA**

**San Diego County**

Black, William, House—SDM–W–12 Locus A (CA–SDI–4669), Address Restricted, La Jolla, 08000343

**COLORADO**

**Chaffee County**

Bode—Stewart House, 803 F St., Salida, 08000344

**Park County**

Trout Creek—Annex—Settele Ranch, (Ranching Resources of South Park, Colorado MPS), 3242 Co. Rd. 7, Fairplay, 08000345

**DISTRICT OF COLUMBIA**

**District of Columbia**

Garden Club of America Entrance Marker at Georgia Avenue, (Garden Club of America Entrance Markers in Washington, D.C. MPS) Georgia Ave. at Kalmia Rd. & Alaska Ave., Washington, 08000347

Garden Club of America Entrance Markers at Chevy Chase Circle, (Garden Club of America Entrance Markers in Washington, D.C. MPS), Reservation 335A, Washington, 08000346

Garden Club of America Entrance Markers at Westmoreland Circle, (Garden Club of America Entrance Markers in Washington, D.C. MPS), Reservation 559, Washington, 08000348

**GEORGIA**

**Barrow County**

Carlyle—Blakey Farm, 568 GA 211 NW., Winder, 08000353

**Chatham County**

Mulherin—Righton Raised Tybee Cottage, 14 8th Pl., Tybee Island, 08000349

**Fulton County**

Glenn Building, 110 Marietta St., Atlanta, 08000350

Memorial to the Six Million, 1173 Cascade Ave. SW., Atlanta, 08000351

**Pickens County**

Pickens County Courthouse, 50 N. Main St., Jasper, 08000352

**Polk County**

Northwest Cedartown Historic District, Roughly bounded by Jule Peek Ave., Spruce St., Wissahickon Ave., & Marshall St., Cedartown, 08000354

**Tift County**

Tifton Residential Historic District, Roughly Bounded by 14th, Goff, & 2nd Sts. & Forrest Ave., Tifton, 08000355

**IOWA**

**Muscatine County**

West Hill Historic District, (Muscatine, Iowa MPS AD), Roughly bounded by W. 2nd St. from Pine to Ash, W 3rd St. & W. 4th St. from Chestnut to near Ash, Muscatine, 08000356

**Pottawattamie County**

Pioneer Implement Company, 1000 S. Main St., Council Bluffs, 08000357

**MARYLAND**

**Baltimore Independent City**

Riverside Historic District, Bounded by Race St from W. S to Winder, E. to Webster, N. to Heath, E. to Boyle & N. to Fort then W. to Marshall, Baltimore (Independent City), 08000358

**MISSOURI**

**St. Louis Independent City**

Coca-Cola Syrup Plant, 8125 Michigan Ave., St. Louis (Independent City), 08000359

Judson, Frederick Newton, House, 3733 Washington Ave., St. Louis (Independent City), 08000360

**NEW JERSEY**

**Mercer County**

Golden Swan—True American, 101—107 S. Warren St., Trenton, 08000361

Trenton Friends Meeting House, 142 E. Hanover St., Trenton, 08000362

**Middlesex County**

First Presbyterian Church and Cemetery, 600 Rahway Ave., Woodbridge, 08000363

**Morris County**

Methodist Episcopal Church, 24 Madison Ave., Madison, 08000364

**NORTH CAROLINA**

**Bladen County**

Carver's Creek Methodist Church, 16904 NC 87 E., Council, 08000365

**Buncombe County**

Monte Vista Hotel, 308 W. State St., Black Mountain, 08000366

**Caswell County**

Malone, James, House, 7374 U.S. 158, Leasburg, 08000367

**Macon County**

Harbison, Thomas Grant, House, 2930 Walhalla Rd., Highlands, 08000368

**Wilkes County**

Wilkes Hosiery Mills, 407 F. St., North Wilkesboro, 08000369

**WISCONSIN**

**Dane County**

Jensvold, Gulbrand and Bertha, House, 1033 WI 78, Perry, 08000370

[FR Doc. E8–7117 Filed 4–3–08; 8:45 am]

**BILLING CODE 4310–70–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1123 (Final)]**

## Steel Wire Garment Hangers From China

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of the final phase of an antidumping investigation.

**SUMMARY:** The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1123 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of steel wire garment hangers, provided for in subheading 7326.20 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**EFFECTIVE DATE:** March 25, 2008.

**FOR FURTHER INFORMATION CONTACT:** Gabriel Ellenberger (202–205–3289), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of steel wire garment hangers from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on July 31, 2007, by M&B Metal Products Company, Inc., Leeds, AL.

*Participation in the investigation and public service list.*—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff report.*—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on May 29, 2008, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

*Hearing.*—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on June 12, 2008, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 6, 2008. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 10, 2008, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

*Written submissions.*—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is June 5, 2008. Parties may also file written testimony in connection

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as ''steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and/or whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers. Specifically excluded from the scope of this investigation are wooden, plastic, and other garment hangers that are classified under separate subheadings of the HTSUS.''

with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is June 19, 2008; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before June 19, 2008. On July 9, 2008, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 11, 2008, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: March 31, 2008.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8–7011 Filed 4–3–08; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–749 (Second Review)]**

## Persulfates From China

### Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on persulfates from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### Background

The Commission instituted this review on November 1, 2007 (72 FR 61907) and determined on February 4, 2008 that it would conduct an expedited review (73 FR 8903, February 15, 2008).

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 31, 2008. The views of the Commission are contained in USITC Publication 3988 (March 2008), entitled *Persulfates from China: Investigation No. 731–TA–749 (Second Review).*

By order of the Commission.

Issued: March 31, 2008.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8–7010 Filed 4–3–08; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–643]**

## In the Matter of Certain Cigarettes and Packaging Thereof; Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 5, 2008, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Philip Morris USA Inc. of Richmond, Virginia. A supplement to the complaint was filed on March 26, 2008. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cigarettes and packaging thereof that infringe U.S. Trademark Registration Nos. 68,502; 938,510; 1,039,412; 1,544,782; 1,651,628; 378,340; 865,627; 1,164,854; 894,450; 912,374; 912,375; 1,227,743; 1,897,685; and 1,602,699. The complaint, as supplemented, further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

**ADDRESSES:** The complaint and supplement, except for any confidential information contained therein, are 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., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Kecia J. Reynolds, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2580.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2007).

*Scope of Investigation:* Having considered the complaint, the U.S.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

International Trade Commission, on March 31, 2008, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain cigarettes and packaging thereof by reason of infringement of one or more of U.S. Trademark Registration Nos. 68,502; 938,510; 1,039,412; 1,544,782; 1,651,628; 378,340; 865,627; 1,164,854; 894,450; 912,374; 912,375; 1,227,743; 1,897,685; and 1,602,699, and whether an industry in the United States exists as required by subsection (a)(2) of Section 337; and

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Philip Morris USA Inc., 6601 West Broad Street, Richmond, Virginia 23230.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: G.K.L. International SRL d.b.a. *all-cigarettes-brands.com,* M. Costin Str., 7, Chisinau, MD–2068, Moldova; Emarket Systems Ltd. d.b.a. *all-discount-cigarettes.com,* 7 Craig St., Belize City, Belize; Jamen Chong d.b.a. *Asiadfs.com,* BLK 162, #02–110, Bukit Batok, Street 11, 650162, Singapore; Tri-kita d.b.a. *Cheapcigarettes4all.com,* Mr. Andrey Schvedov, Kosmonavtov 104a, Nikolaev, NA 54001, Ukraine; Mr. Eduard Lee d.b.a. *Cigarettesonlineshop.com,* Kyrgyz-Israel Joint Enterprise Master, Prospect Mira 303, Bishkek, Kyrgyzstan 720001, Kyrgyzstan; Zonitech Properties Limited d.b.a. *Cigline.net,* Suite 31, Don House, 30–38 Main Street, Gibraltar; Eugenia Moskovchuk d.b.a. *Cigoutlet.biz,* Alcesia SRL, Str. Damian L.28, Chisinau, MD–2059, Moldova; Best Products Solution Limited d.b.a. *Dirtcheapbutts.com,* Suite B, 28 Harley Street, London WIG 9QR, United Kingdom; Cendano d.b.a. *Galastore.com,* Suite 2, Portland House, Glacis Road, Gibraltar 34203, Gibraltar; LMB Trading SA d.b.a. *k2smokes.ch,* Vicolo Maderno 3, Bissone, CH–6816, Switzerland; Ms. Svetlana Trevinska d.b.a. *Save-on-cigarettes.com,* 312 Spaska, 43667 Kiev, Ukraine; Zonitech Properties Limited d.b.a. *Shopping-heaven.com,* Suite 31, Don House, 30–38 Main Street, Gibraltar; G.K.L. International SRL d.b.a. *smokerjim.net,* M. Costin Str., 7, Chisinau, MD–2069, Moldova.

(c) The Commission investigative attorney, party to this investigation, is Kecia J. Reynolds, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or cease and desist orders or both directed against the respondent.

Issued: April 1, 2008.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8–7005 Filed 4–3–08; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–642]**

### In the Matter of Certain Catheters, Consoles and Other Apparatus for Cryosurgery, and Components Thereof; Correction to the Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Correcting amendment.

**SUMMARY:** This amendment corrects a typographical error in the notice of investigation issued by the Commission on March 27, 2008. This notice corrects a typographical error in the title of the investigation. Therefore, the Commission is amending the notice to reflect the change in the title of the investigation, particularly, the word ''catheter'' to ''catheters.''

**DATES:** Effective on April 4, 2008.

**FOR FURTHER INFORMATION CONTACT:** Marilyn R. Abbott, Secretary to the Commission, (202) 205–2000 (e-mail: *marilyn.abbott@usitc.gov*).

Issued: April 1, 2008.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8–6998 Filed 4–3–08; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on March 31, 2008, a proposed Settlement Agreement in the matter of *In re Marcal Paper Mills, Inc.,* Case No. 06–21886(MS), was lodged with the United States Bankruptcy Court for the District of New Jersey.

The proposed Settlement Agreement is between the United States and the purchasers of the Debtor's manufacturing facility in Elmwood Park, New Jersey. The purchasers are Marcal Paper Mills, LLC and Marcal Manufacturing, LLC (''Purchasers''). The proposed Settlement Agreement will resolve certain matters related to the potential liability of the Purchasers under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.* Pursuant to the proposed Settlement Agreement, the Purchasers will undertake steps to remediate environmental contamination at the facility and will pay $1,500,000 to the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re*

*Marcal Paper Mills, Inc.,* D.J. Ref. No. 90–11–3–07683/5.

The Settlement Agreement may be examined at the United States Environmental Protection Agency Region 2, 290 Broadway, New York, New York 10007. During the public comment period, the Settlement Agreement may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.75 (25 cents per page reproduction cost) payable to the U.S. Treasury, or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Maureen Katz,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. E8–6954 Filed 4–3–08; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–0016]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day Notice of Information Collection Under Review: Application for Registration of Firearms Acquired by Certain Governmental Entities.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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 June 3, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Schaible, National Firearms Act Branch, 99 New York Avenue, NE., Washington, DC 20226.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Registration of Firearms Acquired by Certain Governmental Entities.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 10 (5320.10). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Federal Government. Other:* Individual or households; business or other for-profit; State, local or tribal Government. The form is required to be submitted by State and local government entities wishing to register an abandoned or seized and previously unregistered National Firearms Act weapon. The form is required whenever application for such a registration is made.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1500 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 3000 annual total burden hours associated with this 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: April 1, 2008.

**Lynn Bryant,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. E8–7087 Filed 4–3–08; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–0021]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-day notice of information collection under review: Firearms Transaction Record Part II—Intrastate Non-Over-the-Counter.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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 June 3, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Barbara Terrell, Firearms Enforcement Branch, 99 New York Avenue, NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Firearms Transaction Record Part II—Intrastate Non-Over-the-Counter.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 4473 Part II (5300.9). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* Business or other for-profit. The form is used to determine the eligibility of a person to receive a firearm from a Federal firearms licensee and to establish the identity of the buyer. The form is also used in law enforcement investigations to trace firearms or to confirm criminal activity.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 500 respondents will complete a 20 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 165 annual total burden hours associated with this 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: April 1, 2008.

**Lynn Bryant,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. E8–7088 Filed 4–3–08; 8:45 am]

BILLING CODE 4410–FY–P

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Public Comment and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the comment received on the proposed Final Judgment in *United States* v. *Vulcan Materials Company and Florida Rock Industries, Inc.*, No. 1:07–CV–02044, which was filed in the United States District Court for the District of Columbia on November 13, 2007, together with the response of the United States to the comment.

Copies of the comment and the response are available for inspection at the Department of Justice Antitrust Division, 325 Seventh Street, NW., Room 215, Washington, DC 20530, (telephone (202) 514–2481), and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

**J. Robert Kramer II,**

*Director of Operations, Antitrust Division.*

**United States District Court For the District of Columbia**

*United States of America, Plaintiff, v. Vulcan Materials Company and Florida Rock Industries, Inc., Defendants.*

Case No.: 1:07–CV–02044.
Judge: Sullivan, Emmet G.
Deck Type: Antitrust.
Date Stamp:

**Plaintiff United States' Response To Public Comments**

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (''APPA'' or ''Tunney Act''), the United States hereby responds to the one public comment received regarding the proposed Final Judgment in this case. After careful consideration of the comment, the United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint. The United States will move the Court for entry of the proposed Final Judgment after the public comment and this Response have been published in the **Federal Register**, pursuant to 15 U.S.C. 16(d).

On November 13, 2007, the United States filed the Complaint in this matter alleging that the proposed acquisition of Florida Rock Industries, Inc. (''Florida Rock'') by Vulcan Materials Company (''Vulcan'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment and a Hold Separate Stipulation and Order (''HSSO'') signed by plaintiff and the defendants, consenting to the entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act, 15 U.S.C. 16. Pursuant to those requirements, the United States filed its Competitive Impact Statement (''CIS'') in this Court, also on November 13, 2007; published the proposed Final Judgment and CIS in the **Federal Register** on December 4, 2007, *see United States* v. *Vulcan Materials Company and Florida Rock Industries, Inc.*, 72 FR 68189; and published summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, in *The Washington Post* for seven days beginning on December 16, 2007 and ending on December 22, 2007. The 60-day period for public comments ended on February 20, 2008, and one comment was received as described below and attached hereto.

**I. The Investigation and Proposed Resolution**

On February 19, 2007, Vulcan and Florida Rock entered into an agreement for Vulcan to acquire Florida Rock in a cash-and-stock transaction. For the next nine months, the United States Department of Justice (''Department'') conducted an extensive, detailed investigation into the competitive effects of the Vulcan/Florida Rock transaction. As part of this investigation, the Department obtained substantial documents and information from the merging parties and issued six Civil Investigative Demands to third parties. The Department received and considered more than 130 boxes of hard copy material and over 280,000 electronic files. More than 130 interviews were conducted with customers, competitors, and other individuals with knowledge of the industry. The investigative staff carefully analyzed the information provided and thoroughly considered all of the issues presented. The Department

considered the potential competitive effects of the transaction on coarse aggregate sold in a number of different geographic areas, obtaining information about this product and these areas from customers, competitors, and other knowledgeable parties. The Department concluded that the combination of Vulcan and Florida Rock likely would lessen competition in the production, distribution and sale of coarse aggregate in eight different geographic markets.

Coarse aggregate is crushed stone produced at quarries and used for such things as road base and the production of ready mix concrete and asphalt. There are no reliable substitutes for coarse aggregate, and to the extent that any substitutes exist they are already being used by customers to the fullest extent possible, and their use cannot be increased in response to an increase in the price of coarse aggregate. A small but significant increase in price would not likely cause coarse aggregate consumers to switch products or otherwise reduce their usage of coarse aggregate so as to make the price increase unprofitable.

The eight separate geographic markets in which Vulcan's acquisition of Florida Rock would lessen competition substantially are: Northwest Atlanta, West Atlanta, Southwest Atlanta, South Atlanta, Southeast Atlanta, Georgia; Columbus, Georgia; Chattanooga, Tennessee; and South Hampton Roads, Virginia. In each market, certain Vulcan and Florida Rock quarries competed with each other, and usually also with one or two other companies, to serve customers in that market, and customers with plants or jobs within that market were not able to turn to other suppliers because their quarries were too far away and their hauling costs were too great.

As explained more fully in the Complaint and CIS, the acquisition of Florida Rock by Vulcan would have substantially increased concentration and lessened competition in the production, distribution and sale of coarse aggregate in each of the eight affected geographic markets. In the affected markets, the acquisition would have reduced the number of suppliers from four to three, from three to two, or from two to one; would have eliminated competition between Vulcan and Florida Rock; and would have increased the likelihood that Vulcan would unilaterally increase the price of coarse aggregate to a significant number of customers. In certain markets, the acquisition also would have facilitated coordination among the remaining coarse aggregate suppliers. In every affected market, it was likely that the acquisition would lead to higher prices. Therefore, the Department filed its Complaint alleging competitive harm in the coarse aggregate product market in each of the eight affected geographic markets, and sought a remedy that would ensure that such harm is prevented. For each of the eight affected geographic markets, the proposed Final Judgment requires the divestiture of a quarry serving that market, and in the case of South Hampton Roads also requires the divestiture of one distribution yard.

The proposed Final Judgment in this case is designed to preserve competition in the production, distribution, and sale of coarse aggregate in each of the eight affected geographic markets. The proposed Final Judgment requires the divestiture of sufficient assets to prevent the increase in concentration that resulted from the combination of Vulcan and Florida Rock in each affected market.

## II. Summary of Public Comment and Response

During the 60-day public comment period, the United States received only one comment, from the North Lamar County Citizens Association (''NLCCA''), relating primarily to a quarry located in that county.[1] No comment was received from any coarse aggregate customer located in any of the eight geographic markets, or anywhere else, or from any competitor selling coarse aggregate to such customers. Upon review, the United States believes that nothing in the comment warrants a change in the proposed Final Judgment or is sufficient to suggest that the proposed Final Judgment is not in the public interest. The comment asserts that the relief obtained by the United States in the Southeast Atlanta market is inadequate because it did not require the divestiture of Florida Rock's Lamar County quarry along with the divestiture of Vulcan's Butts County quarry. The United States addresses this concern below and explains how the remedy is appropriate.[2]

### *A. Summary of the Comment Submitted by the NLCCA*

As the President of the organization, Jonathan P. Sexton, states in the NLCCA's comment, Department attorneys spoke with Mr. Sexton during the course of the investigation, and the United States was therefore aware of the Association's concerns about the Lamar quarry.

In its comment, the NLCCA notes that the proposed Final Judgment does not mention the Lamar quarry, which according to the organization received the necessary permits for its operation only on November 9, 2007, four days before the filing of the Complaint and proposed Final Judgment. The NLCCA asserts that Vulcan ''plans to serve southeast Atlanta with not only the Butts County Quarry but the huge 588.50 [acre] Lamar County Quarry,'' and that allowing Vulcan to continue to operate the Lamar County Quarry ''effectively nullifies the effect on competition of the divesting of the Butts County Quarry.'' The comment states that ''the Lamar County Quarry is centered between the Butts County Quarry and the Griffin Quarry,'' and that there is ''no major competition in this area of South and Southeastern Atlanta.'' The NLCCA concludes by arguing that the proposed Final Judgment (the ''Consent Agreement'') is ''flawed and in error'' because of its ''failure to address competition in light of the Lamar County Quarry,'' and that the defendants ''should be required to divest of both the Butts County Quarry and the Lamar County Quarry.''

### *B. Response of United States to the NLCCA's Comment*

The United States has carefully considered the NLCCA's comment, but disagrees that failure to require the divestiture of the Lamar quarry will have any adverse effect on competition. As noted in the comment, the three quarries nearest to one another in the area around Lamar County are: (1) The Griffin Quarry, which had been owned by Florida Rock; (2) the Lamar County quarry project, to the southeast of the Griffin quarry, which was being developed by Florida Rock; and (3) the Butts County quarry project, still further to the east, which was being developed by Vulcan. The key fact is that the Griffin quarry and the Lamar County project were both owned by Florida Rock, and there would have been no competition between these two quarries whether or not Florida Rock had been acquired by Vulcan. The Butts County project, on the other hand, was being developed by Vulcan, and this quarry

[1] *The NLCCA Comment came in two parts, the primary comment by letter dated January 12, 2008, and a supplement by letter dated January 14, 2008.*

[2] *The comment also asserts that the quarry identified in the complaint as belonging to one of the defendants' competitors in the South Atlanta market, and located in College Park, Georgia, does not appear in the Mining Directory of Georgia put out by the Georgia Department of Natural Resources, and that the Association is ''unaware of any such quarry.'' The United States does not know why the College Park quarry does not appear in the list of quarries shown on the document attached by the Association. However, it does appear on the Georgia Department of Transportation's Web site, at http://wwwdot.state.ga.us/dotJconstruction Imaterials-researchfDocuments/Pdf/qpl/qpl02.pdf.*

thus would have provided independent competition to the Florida Rock quarries in the area but for the acquisition. It is this competition—the competition provided by the Butts County quarry—that would have been removed by Vulcan's acquisition of Florida Rock. And it is this competition that the Final Judgment preserves by requiring that the Butts quarry project be divested. Requiring divestiture of the Lamar County quarry as well as the Butts quarry would go well beyond what is needed to restore competition in the Southeast Atlanta market, which is why the United States did not seek to have this divestiture included in the Final Judgment.

**III. Conclusion**

The issues raised in the public comment were among the many considered during the extensive and thorough investigation. The United States has determined that the proposed Final Judgment provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint, and is therefore in the public interest. The United States will move this Court to enter the proposed Final Judgment after the comment and response are published. Respectfully submitted,

Dated: March 18, 2008.

Robert W. Wilder,
Attorney.

U.S. Department of Justice,
Antitrust Division,
Litigation II Section,
1401 H Street, NW., Suite 3000,
Washington, DC 20530,
Telephone: (202) 307–0924.

**Certificate of Service**

I, Robert W. Wilder, hereby certify that on the 18th day of March, 2008, I caused a copy of the foregoing Plaintiff United States' Response to Public Comments with attachments to be mailed, by U.S. mail, postage prepaid, to the attorneys listed below:

Counsel for Defendant Vulcan Materials Company: Joseph D. Larson, Esquire, Wachtell, Lipton, Rosen & Katz LLP, 51 West 52nd Street, New York, New York 10019, (212) 403–1000, *JDLarson@wlrk.com*.

Counsel for Defendant Florida Rock Industries, Inc.: Laura A. Wilkinson, Esquire, Weil, Gotshal & Manges LLP, 1300 I Street, NW., Suite 900, Washington, DC 20005, (202) 682–7005, *laura.wilkinson@weil.com*.

North Lamar County Citizens Association: Jonathan P. Sexton, President, P.O. Box 516, Milner, Georgia 30257, (770) 474–9335, *jonsclerk@yahoo.com*.

**North Lamar County Citizens Association P.O. Box 516, Milner, Georgia 30257. "Quality Growth, Quality Life"**

January 12, 2008.

*Via Certified Mail Return Receipt Na 1555474410048138605*.

Maribeth Petrizzi, Chief, Litigation H Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

Re: *USA DOJ* v. *Vulcan Materials Company and Florida Rock Industries, Inc.*, Case: I:07–cv–02044.

Dear Ms. Petrizzi,

My name is Jonathan Sexton. I am President of the North Lamar County Citizens Association. Please consider this to be our comment pursuant to the Tunney Act regarding the proposed consent decree and the merger of Vulcan Materials Company (Vulcari) and Florida Rock Industries, Inc. (FRI). I read the complaint and the impact with some interest. Let me bring to your attention a major issue that was left out of the impact statement with respect to the anti-competitive effect of this merger on the South Atlanta and Southeast Atlanta markets.

In examining the proposed consent agreement with respect to the South Atlanta and Southeast Atlanta markets, there has been a glaring omission. In paragraph 2(B)(2)(d) and (e) there is no mention of the FRI quarry in development in Lamar County. This quarry is only 9.89 miles from the Vulcan Butts County quarry that is mentioned and is being divested. The Lamar County Quarry is 23 miles from the FRI Griffin Quarry and 29 miles from the Vulcan Stockbridge Quarry. We know that the DOJ is aware of this quarry as I have personally had conversations with Helena Jolly (Gardner) regarding this specific quarry. The quarry received Georgia EPD surface, air, and water permits on November 9, 2007. (A copy of the permits are attached as Exhibit A). This quarry encompasses 588.50 acres in Lamar County and has been described by FRI in public hearings as "one of the best deposits of granite in the State of Georgia outside of Stone Mountain."

As discussed in the impact statement, the issue is competition and competitive pricing in the aggregate industry is typically determined by plant and service locations. Vulcan plans to serve southeast Atlanta with not only the Butts County Quarry but the huge 588.50 Lamar County Quarry. Allowing Vulcan and FRI to operate the Lamar County Quarry effectively nullifies the effect on competition of the divesting of the Butts County Quarry. Vulcan will have effectively ringed in and roped off the southeast Atlanta area from competition if it is allowed to operate this large Lamar County Quarry. Attached as Exhibit 2 is a map of quarries in the area. Flag A is the Butts County Quarry. Flag B is the Lamar County Quarry. Flag R is the Griffin Quarry. All of the blue flags expect for A are competitors. All of the orange flags are Vulcan and FRI quarries. As you can see, the Lamar County Quarry is centered between the Butts County Quarry and the Griffin Quarry. There is no major competition in this area of South and Southeast Atlanta.

Page 2, January 12, 2008.

There is also an error in paragraph 24 of the complaint and impact statement. Paragraph 24 of the complaint and paragraph 2(B)(2)(d) of the Impact Statement refer to an unnamed competitors quarry located in College Park, Georgia that acts as a competitor to Defendants. According to the Mining Directory of Georgia, 21st Edition, Georgia Department of Natural Resources, Environmental Protection Division, there is no such competitor's quarry in College Park, Georgia. We are unaware of any such quarry.

Clearly, failure to address competition in light of the Lamar County Quarry makes the Consent Agreement flawed and in error with respect to decreasing competition and increasing prices in South and Southeast Atlanta. Defendants should be required to divest of both the Butts County Quarry and the Lamar County Quarry.

Sincerely,

Jonathan P. Sexton

President, North Lamar County Citizens Association

Cc: Honorable Emmet G. Sullivan,

Judge, United States District Court for the District of Columbia

BILLING CODE 4410–11–P

PERMIT NO. GA0038768

STATE OF GEORGIA
DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION

AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Georgia Water Quality Control Act (Georgia Laws 1964, p. 416, as amended), hereinafter called the "State Act;" the Federal Water Pollution Control Act, as amended (33 U.S. C. 1251 et seq.), hereinafter called the "Federal Act;" and the Rules and Regulations promulgated pursuant to each of these Acts,

Florida Rock Industries, Inc.
200 Rockwood Road
Tyrone, Georgia 30290

is authorized to discharge from a facility located at

Florida Rock Industries, Inc. - Lamar Quarry (SIC Code 1423)
Georgia Highway 36 East of Barnesville
Barnesville, Lamar County, Georgia 30204

to receiving waters

Little Buck Creek
(Ocmulgee River Basin)

in accordance with effluent limitations, monitoring requirements and other conditions set forth in Parts I, II and III hereof.

This permit shall become effective on November 2, 2007.

This permit and the authorization to discharge shall expire at midnight, September 30, 2012.

Signed this 2nd day of November, 2007.

Director, Carol A. Couch
Environmental Protection Division

# State of Georgia
## Department of Natural Resources
### Environmental Protection Division
### Air Protection Branch

## AIR QUALITY PERMIT

**Permit No.**
**1423-171-0012-B-01-0**

**Effective Date**
NOV 2 2007

In accordance with the provisions of the Georgia Air Quality Act, O.C.G.A. Section 12-9-1, et seq and the Rules, Chapter 391-3-1, adopted pursuant to and in effect under that Act,

Facility Name: **Florida Rock Industries, Inc. – Lamar Quarry**

Mailing Address: 200 Rockwood Road
Tyrone, Georgia 30290

is issued a Permit for the following:

Operation of a granite quarry, stone processing plant, and associated air pollution control equipment.

Facility Location: State Road 36
Barnesville, Georgia 30204 (Lamar County)

This Permit is conditioned upon compliance with all provisions of The Georgia Air Quality Act, O.C.G.A. Section 12-9-1, et seq, the Rules, Chapter 391-3-1, adopted and in effect under that Act, or any other condition of this Permit.

This Permit may be subject to revocation, suspension, modification or amendment by the Director for cause including evidence of noncompliance with any of the above; or for any misrepresentation made in Application No. 14620 dated July 25, 2003; any other applications upon which this Permit is based; supporting data entered therein or attached thereto; or any subsequent submittals or supporting data; or for any alterations affecting the emissions from this source.

This Permit is further subject to and conditioned upon the terms, conditions, limitations, standards, or schedules contained in or specified on the attached 9 pages, which pages are a part of this Permit.

Director Carol A. Couch
Environmental Protection Division

State of Georgia
Department of Natural Resources
ENVIRONMENTAL PROTECTION DIVISION

# SURFACE MINING PERMIT

Permit Number: **1471-07** Date Issued: **November 2, 2007**

Permittee: **Florida Rock Industries, Inc.**
**200 Rockwood Road**
**Tyrone, Georgia 30290**

Operation: **Lamar Quarry**

County: **Lamar**

Permitted Acres: 589

In accordance with the provisions of the Georgia Surface Mining Act of 1968, O.C.G.A. §12-4-70, et seq., and the Rules of the Georgia Department of Natural Resources, Chapter 391-3-3, Surface Mining, both as amended, this Permit is issued for the surface mining operation as recorded hereon and presented in the Application received on **September 23, 2003** and the Mining Land Use Plan approved on **August 23, 2007.**

This Permit is conditioned upon the Operators continued compliance with the provisions of the Georgia Surface Mining Act of 1968, O.C.G.A. §12-4-70, et seq., and the Rules of the Georgia Department of Natural Resources, Chapter 391-3-3, Surface Mining, both as amended; the provisions of the Approved Surface Mining Land Use Plan and Approved Amendments, if any; and any special conditions which may be attached to this Permit.

This Permit shall be rendered null and void should the mining activity not commence within twelve (12) months from the date this Permit becomes final, or should cessation of mining occur for a period of eighteen (18) months without the Operator obtaining an inactive status classification through an Approved Amendment of the Surface Mining Land Use Plan.

Carol A. Couch, Ph.D., Director
Environnemental Protection Division

Maps appearing here in the comment are illegible upon reprinting. The maps are available at the Department of Justice Antitrust Division, 325 Seventh Street, NW., Room 215, Washington, DC 20530, (202) 514–2481, and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

**North Lamar County Citizens Association**

P.O. Box 516, Milner, Georgia 30257.
''Quality Growth, Quality Life''
January 14, 2008.
Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street NW., Suite 3000, Washington, DC 20530.
Supplement To Comment
Re: USA DOJ v. Vulcan Materials Company and Florida Rock Industries, Inc., Case: I:07–cv–02044.
Dear Ms. Petrizzi,
After sending our comment I realized there was no contact information included. Accordingly, below is my contact information. Also attached are photos showing that FRI has already begun working at the Lamar County Quarry.
If you have any questions, please feel free to call me.
Sincerely,
Jonathan P. Sexton
President, North Lamar County Citizens Association
*Contact:* Jonathan P. Sexton.
*Phone:* 770–474–9335.
*Fax:* 770–474–7113.
*E-mail: jonsclerk@yahoo.com.*
Photographs appearing here in the comment are illegible upon reprinting. The photographs are available at the Department of Justice Antitrust Division, 325 Seventh Street, NW., Room 215, Washington, DC 20530, (202) 514–2481, and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

[FR Doc. E8–6875 Filed 4–3–08; 8:45 am]

**BILLING CODE 4410–11–C**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 5, 2008, Rhodes Technologies, 498 Washington Street, Coventry, Rhode Island 02816, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

| Drug | Schedule |
|---|---|
| Tetrahydrocannabinols (7370) | I |
| Methylphenidate (1724) | II |
| Codeine (9050) | II |
| Dihydrocodeine (9120) | II |
| Oxycodone (9143) | II |
| Hydromorphone (9150) | II |
| Hydrocodone (9193) | II |
| Oripavine (9330) | II |
| Thebaine (9333) | II |
| Oxymorphone (9652) | II |
| Noroxymorphone (9668) | II |
| Fentanyl (9801) | II |

The company plans to manufacture the listed controlled substances in bulk for conversion and sale to dosage form manufacturers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 3, 2008.

Dated: March 28, 2008.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E8–7037 Filed 4–3–08; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 10, 2008, Siegfried (USA), Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

| Drug | Schedule |
|---|---|
| Dihydromorphine (9145) | I |
| Amphetamine (1100) | II |
| Methylphenidate (1724) | II |
| Amobarbital (2125) | II |
| Pentobarbital (2270) | II |
| Secobarbital (2315) | II |
| Glutethimide (2550) | II |
| Codeine (9050) | II |
| Oxycodone (9143) | II |
| Hydromorphone (9150) | II |
| Hydrocodone (9193) | II |
| Methadone (9250) | II |
| Methadone intermediate (9254) | II |
| Dextropropoxyphene, bulk (non-dosage forms) (9273). | II |
| Morphine (9300) | II |
| Oxymorphone (9652) | II |

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 3, 2008.

Dated: March 28, 2008.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E8–7039 Filed 4–3–08; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Executive Office for Immigration Review

**[OMB Number 1125–0003]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-day notice of information collection under review: fee waiver request.

The Department of Justice (DOJ), Executive Office for Immigration

Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 3, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact John Blum, Acting General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone: (703) 305–0470.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Fee Waiver Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* Form EOIR 26A. Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* An individual submitting an appeal or motion to the Board of Immigration Appeals. *Other:* None. Abstract: The information on the fee waiver request form is used by the Board of Immigration Appeals to determine whether the requisite fee for a motion or appeal will be waived due to an individual's financial situation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,500 respondents will complete the form annually with an average of one hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,500 total burden hours associated with this collection annually.

*If additional information is required contact:* Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D. Street, NW. Washington, DC 20530.

Dated: April 1, 2008.

**Lynn Bryant,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E8–7089 Filed 4–3–08; 8:45 am]

**BILLING CODE 4410–30–P**

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## DEPARTMENT OF JUSTICE

### Executive Office for Immigration Review

**[OMB Number 1125–0004]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day Notice of Information Collection Under Review: Alien's Change of Address Form: 33/BIA Board of Immigration Appeals, 33/IC Immigration Court.

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The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 3, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact John Blum, Acting General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone: (703) 305–0470.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

**Overview of This Information Collection**

(1) Type of Information Collection: Revision of a currently approved collection.

(2) Title of the Form/Collection: Alien's Change of Address Form: 33/BIA Board of Immigration Appeals, 33/IC Immigration Court.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: Form EOIR 33/BIA, 33/IC. Executive Office for Immigration Review, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: An individual appearing before the Immigration Court or the Board of Immigration Appeals. Other: None. Abstract: The information on the change of address form is used by the Immigration Courts and the Board of Immigration Appeals to determine where to send notices of the

next administrative action or of any decisions in an alien's case.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 15,000 respondents will complete the form annually with an average of 3 minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 750 total burden hours associated with this collection annually.

If additional information is required, contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 1, 2008.

**Lynn Bryant,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E8–7090 Filed 4–3–08; 8:45 am]

**BILLING CODE 4410–30–P**

## DEPARTMENT OF LABOR

### Employment Standards Administration

### Proposed Extension of the Approval of Information Collection Requirements

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning its proposal to extend OMB approval of the information collection for the following reports: Representative Payee Report (CM–623), Representative Payee Report, Short Form (CM–623S), and Physician's/Medical Officer's Statement (CM–787). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before June 3, 2008.

**ADDRESSES:** Mr. Steve Andoseh, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0373, fax (202) 693–1451, e-mail *andoseh.steven@dol.gov.* Please use only one method of transmission for comments (mail, fax, or e-mail).

**SUPPLEMENTARY INFORMATION:**

I. *Background:* The Office of Workers' Compensation Programs (OWCP) administers the Federal Black Lung Workers' Compensation Program. Under the Federal Mine Safety and Health Act (30 U.S.C 901) benefits due to a black lung beneficiary may be paid to a representative payee on behalf of the beneficiary when the beneficiary is unable to manage his/her benefits due to incapability, incompetence, or minority. The CM–623, Representative Payee Report is used to collect expenditure data regarding the disbursement of the beneficiary's benefits by the representative payee to assure that the beneficiary's needs are being met. The CM–623S, Representative Payee—Short Form is a shortened version of the CM–623 that is used when the representative payee is a family member residing with the beneficiary. The CM–787, Physician's/Medical Officer's Statement is used to gather information from the beneficiary's physician about the capability of the beneficiary to manage monthly benefits. This form is used by OWCP to determine if it is in the beneficiary's best interest to have his/her benefits managed by another party. The regulatory authority for collecting this information is in 20 CFR 725.506, 510, 511, and 513. This information collection is currently approved for use through October 31, 2008.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- 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 submissions of responses.

III. *Current Actions:* The Department of Labor seeks the approval for the extension of this currently approved information collection in order to carry out its responsibility to determine if a beneficiary is capable and/or competent to manage his/her black lung benefits, and to ensure that the representative payee is using the benefits to meet the beneficiary's needs.

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Title:* Representative Payee Report (CM–623), Representative Payee Report, Short Form (CM–623S), and Physician's/Medical Officer's Statement (CM–787).

*OMB Number:* 1215–0173.

*Agency Number:* CM–623, CM–623S, CM–787.

*Affected Public:* Individuals or Households, Business or other for-profit and Not-for-profit institutions.

*Total Respondents:* 2,100.

*Total Annual responses:* 2,100.

*Average Time per Response:* 46.9 minutes.

BURDEN ESTIMATES

| Form No. | Number of respondents | Number of responses | Avg. time per response (min.) | Burden hours |
|---|---|---|---|---|
| CM–623 | 900 | 900 | 90 | 1,350 |
| CM–623S | 100 | 100 | 10 | 17 |
| CM–787 | 1,100 | 1,100 | 15 | 275 |

BURDEN ESTIMATES—Continued

| Form No. | Number of respondents | Number of responses | Avg. time per response (min.) | Burden hours |
|---|---|---|---|---|
| Total | 2,100 | 2,100 | 46.9 | 1,642 |

*Estimated Total Burden Hours:* 1,642.
*Frequency:* On Occasion.
*Total Burden Cost (capital/startup):* $0.
*Total Burden Cost (operating/maintenance):* $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 27, 2008.

**Hazel M. Bell,**

*Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.*

[FR Doc. E8–6963 Filed 4–3–08; 8:45 am]

**BILLING CODE 4510–CK–P**

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''National Longitudinal Survey of Youth 1997.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 3, 2008.

**ADDRESSES:** Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, 202–691–7628. (This is not a toll free number.)

**FOR FURTHER INFORMATION CONTACT:** Amy A. Hobby, BLS Clearance Officer, 202–691–7628. (See **ADDRESSES** section.)

**SUPPLEMENTARY INFORMATION:**

### I. Background

The National Longitudinal Survey of Youth 1997 (NLSY97) is a nationally representative sample of persons who were born in the years 1980 to 1984. These respondents were ages 12–17 when the first round of annual interviews began in 1997; the twelfth round of annual interviews will be conducted from September 2008 to May 2009. The Bureau of Labor Statistics (BLS) contracts with the National Opinion Research Center (NORC) at the University of Chicago to conduct the NLSY97. The primary objective of the survey is to study the transition from schooling to the establishment of careers and families. The longitudinal focus of this survey requires information to be collected from the same individuals over many years in order to trace their education, training, work experience, fertility, income, and program participation.

One of the goals of the Department of Labor (DOL) is to produce and disseminate timely, accurate, and relevant information about the U.S. labor force. The BLS contributes to this goal by gathering information about the labor force and labor market and disseminating it to policymakers and the public so that participants in those markets can make more informed, and thus more efficient, choices. Research based on the NLSY97 contributes to the formation of national policy in the areas of education, training, employment programs, and school-to-work transitions. In addition to the reports that the BLS produces based on data from the NLSY97, members of the academic community publish articles and reports based on NLSY97 data for the DOL and other funding agencies. To date, more than 70 articles examining NLSY97 data have been published in scholarly journals. The survey design provides data gathered from the same respondents over time to form the only data set that contains this type of information for this important population group. Without the collection of these data, an accurate longitudinal data set could not be provided to researchers and policymakers, thus adversely affecting the DOL's ability to perform its policy- and report-making activities.

### II. Current Action

The BLS seeks approval to conduct round 12 of annual interviews of the NLSY97. Respondents to the NLSY97 will undergo an interview of approximately one hour during which they will answer questions about schooling and labor market experiences, family relationships, and community background. During the fielding period for the main round 12 interviews, about 2 percent of respondents will be asked to participate in a brief validation interview a few weeks after the initial interview. The purpose of the validation interview is to verify that the initial interview took place as the interviewer reported and to assess the data quality of selected questionnaire items.

The BLS proposes to record randomly selected segments of the main interviews and all validation interviews during round 12. Recording interviews can help the BLS and NORC to ensure that the interviews actually took place and that interviewers are reading the questions exactly as worded and entering the responses properly. Recording also can help to identify parts of the interview that might be causing problems or misunderstanding for interviewers or respondents. The BLS and NORC will not release any variables that are developed from the recording of the interviews to anyone not associated with the NLS program at the BLS or its contractors. Each respondent will be informed that the interview may be recorded for quality control, testing, and training purposes. If the respondent objects to the recording of the interview, the interviewer will confirm to the respondent that the interview will not be recorded and then proceed with the interview.

During round 12, the BLS proposes to modify the financial and in-kind incentives offered to respondents to encourage greater cooperation both in the current round and in future rounds. The changes to the round 12 incentive structure are based on the results of an incentive experiment conducted during rounds 10 and 11. Other changes in round 12 include asking the political participation questions that were asked previously in rounds 8 and 10. The round 12 questionnaire includes an item in the health section and in the interviewer remarks section asking the respondent and interviewer, respectively, to code the respondent's skin color on a scale from 0 to 10. This information is useful for studying workplace discrimination and for assessing the risk of certain health conditions.

**III. Desired Focus of Comments**

The Bureau of Labor Statistics is particularly interested in comments that:

- 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.
- 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 submissions of responses.

*Type of Review:* Revision of a currently approved collection.

*Agency:* Bureau of Labor Statistics.

*Title:* National Longitudinal Survey of Youth 1997.

*OMB Number:* 1220–0157.

*Affected Public:* Individuals or households.

| Form | Total respondents | Frequency | Total responses | Average time per response (min.) | Estimated total burden (hours) |
|---|---|---|---|---|---|
| Main Round 12 Interview | 7,350 | Annually | 7,350 | 60 | 7,350 |
| Round 12 Validation Interview | 147 | Annually | 147 | 4 | 10 |
| Totals | 7,497 | | 7,497 | | 7,360 |

The difference between the total number of respondents and the total number of responses reflects the fact that about 147 respondents will be interviewed twice, once in the main round 12 survey and a second time in the validation interview.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 31st day of March, 2008.

**Kimberley Hill,**

*Acting Chief, Division of Management Systems, Bureau of Labor Statistics.*

[FR Doc. E8–6965 Filed 4–3–08; 8:45 am]

BILLING CODE 4510–24–P

## DEPARTMENT OF LABOR

### Veterans' Employment & Training Service

### Veteran Employment Services Survey Proposed Collection; Correction

**AGENCY:** Veterans' Employment & Training Service.

**ACTION:** Notice; correction.

**SUMMARY:** The Veterans' Employment and Training Service published a document in the **Federal Register** of March 5, 2008, concerning a proposed data collection under the Veteran Employment Services Survey. The document contained an incorrect submission deadline, and an incorrect total burden cost.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ruth M. Samardick, (202) 693–4706.

**Corrections (2)**

1. In the **Federal Register** of March 5, 2008, in FR Doc. E8–4091, on page 11956, in the third column, in the first full paragraph, correct the submission deadline listed under the **DATES** caption to read:

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before Monday, May 5, 2008.

2. In the **Federal Register** of March 5, 2008, in FR Doc. E8–4091, on page 11957, in the first column, one paragraph before the signature line, correct the total burden cost (operating/maintenance) to read:

*Total Burden Cost (operating/maintenance):* $0.

Dated: March 31, 2008.

**John M. McWilliam,**

*Deputy Assistant Secretary, Veterans Employment and Training.*

[FR Doc. E8–6964 Filed 4–3–08; 8:45 am]

BILLING CODE 4510–79–P

## LEGAL SERVICES CORPORATION

### Notice of Availability of Calendar Year 2009 Competitive Grant Funds

**AGENCY:** Legal Services Corporation.

**ACTION:** Solicitation for proposals for the Provision of Civil Legal Services.

**SUMMARY:** The Legal Services Corporation (LSC) is the national organization charged with administering Federal funds provided for civil legal services to low-income people.

LSC hereby announces the availability of competitive grant funds and is soliciting grant proposals from interested parties who are qualified to provide effective, efficient, and high quality civil legal services to eligible clients in the service area(s) of the states and territories identified below. The exact amount of congressionally appropriated funds and the date, terms, and conditions of their availability for calendar year 2009 have not been determined.

**DATES:** See **SUPPLEMENTARY INFORMATION** for grants competition dates.

**ADDRESSES:** Legal Services Corporation—Competitive Grants, 3333 K Street, NW., Third Floor, Washington, DC 20007–3522.

**FOR FURTHER INFORMATION CONTACT:** Office of Program Performance by e-mail at *competition@lsc.gov*, or visit the

grants competition Web site at *http://www.grants.lsc.gov*.

**SUPPLEMENTARY INFORMATION:** The Request for Proposals (RFP) will be available April 11, 2008. Applicants must file a Notice of Intent to Compete (NIC) to participate in the competitive grants process. Applicants must file the NIC by May 16, 2008, 5 p.m. E.D.T. The due date for filing grant proposals is June 2, 2008, 5 p.m. E.D.T.

LSC is seeking proposals from: (1) Non-profit organizations that have as a purpose the provision of legal assistance to eligible clients; (2) private attorneys; (3) groups of private attorneys or law firms; (4) state or local governments; and (5) sub-state regional planning and coordination agencies that are composed of sub-state areas and whose governing boards are controlled by locally elected officials.

The RFP, containing the NIC and grant application, guidelines, proposal content requirements, service area descriptions, and specific selection criteria, will be available from *http://www.grants.lsc.gov*, April 11, 2008. LSC will not fax the RFP to interested parties.

Below are the service areas for which LSC is requesting grant proposals. Service area descriptions will be available from Appendix A of the RFP. Interested parties are asked to visit *http://www.grants.lsc.gov* regularly for updates on the LSC competitive grants process (once at the site click on LSC Applicant Information then click on LSC Applicant Information System Bulletin Board).

| State | Service area |
|---|---|
| Alaska | AK–1, NAK–1 |
| American Samoa. | AS–1 |
| California | CA–12, CA–14, CA–31, MCA |
| Connecticut | CT–1, NCT–1 |
| Delaware | DE–1, MDE |
| Florida | FL–18 |
| Guam | GU–1 |
| Hawaii | NHI–1 |
| Idaho | ID–1, MID, NID–1 |
| Iowa | IA–3, MIA |
| Kansas | KS–1, MKS |
| Maine | ME–1, MMX–1, NME–1 |
| Maryland | MD–1, MMD |
| Massachusetts | MA–4, MA–10 |
| Micronesia | MP–1 |
| Minnesota | NMN–1 |
| Mississippi | MS–10, NMS–1 |
| Nebraska | NE–4, MNE, NNE–1 |
| Nevada | NV–1, MNV, NNV–1 |
| New Hampshire | NH–1 |
| New Jersey | NJ–8, NJ–12, NJ–15, NJ–16, NJ–17, NJ–18, MNJ |
| Oregon | OR–6, MOR, NOR–1 |
| Pennsylvania | PA–25 |
| Rhode Island | RI–1 |
| Utah | UT–1, MUT, NUT–1 |
| Vermont | VT–1 |
| Virgin Islands | VI–1 |
| Virginia | VA–15, VA–16 |
| Washington | WA–1, MWA, NWA–1 |
| Wisconsin | WI–2, NWI–1 |

Dated: April 2, 2008.

**Victor M. Fortuno,**

*Vice President and General Counsel.*

[FR Doc. E8–7177 Filed 4–3–08; 8:45 am]

BILLING CODE 7050–01–P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice.

**SUMMARY:** NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted to OMB at the address below on or before May 5, 2008, to be assured of consideration.

**ADDRESSES:** Send comments to Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5167.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–713–7409.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on January 15, 2008 (73 FR 2545). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, NARA is soliciting comments concerning the following information collection:

*Title:* Court Order Requirements.

*OMB number:* 3095–0038.

*Agency form number:* NA Form 13027.

*Type of review:* Regular.

*Affected public:* Veterans and former Federal civilian employees, their authorized representatives, state and local governments, and businesses.

*Estimated number of respondents:* 5,000.

*Estimated time per response:* 15 minutes.

*Frequency of response:* On occasion.

*Estimated total annual burden hours:* 1,250 hours.

*Abstract:* The information collection is prescribed by 36 CFR 1228.164. In accordance with rules issued by the Office of Personnel Management, the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers Official Personnel Folders (OPF) and Employee Medical Folders (EMF) of former Federal civilian employees. In accordance with rules issued by the Department of Defense (DOD) and the Department of Transportation (DOT), the NPRC also administers military service records of veterans after discharge, retirement, and death, and the medical records of these veterans, current members of the Armed Forces, and dependents of Armed Forces personnel. The NA Form 13027, Court Order Requirements, is used to advise requesters of (1) the correct procedures to follow when requesting certified copies of records for use in civil litigation or criminal actions in courts of law and (2) the information to be provided so that records may be identified.

Dated: March 27, 2008.

**Martha Morphy,**

*Assistant Archivist for Information Services.*

[FR Doc. E8–6970 Filed 4–3–08; 8:45 am]

BILLING CODE 7515–01–P

## NATIONAL CREDIT UNION ADMINISTRATION

### Guidance Regarding Prohibitions Imposed by Section 205(d) of the Federal Credit Union Act

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed Interpretive Ruling and Policy Statement 08–1.

**SUMMARY:** The NCUA is proposing to adopt an Interpretive Ruling and Policy Statement (IRPS) regarding prohibitions imposed by Section 205(d) of the Federal Credit Union Act (FCU Act) (12 U.S.C. 1785(d)(1)). Section 205(d) of the FCU Act prohibits a person who has been convicted of any criminal offense involving dishonesty or breach of trust, or who has entered into a pretrial diversion or similar program in connection with a prosecution for such offense, from participating in the affairs of an insured credit union except with the prior written consent of the NCUA Board. The proposed IRPS provides direction and guidance to federally insured credit unions and those persons who may be affected by Section 205(d) because of a prior criminal conviction or pretrial diversion program participation by describing the actions that are prohibited under the statute and describing the procedures for applying for NCUA Board consent on a case-by-case basis.

**DATES:** Comments must be received on or before June 3, 2008.

**ADDRESSES:** You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *NCUA Web Site: http://www.ncua.gov/news/proposed_regs/proposed_regs.html*. Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov*. Include ''[Your name] Comments on Proposed IRPS 08–1'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

**FOR FURTHER INFORMATION CONTACT:** Jon Canerday, Trial Attorney, Office of General Counsel, at the above address, by e-mail at *canerday@ncua.gov* or by telephone at (703) 518–6548.

**SUPPLEMENTARY INFORMATION:**

### A. Introduction

Section 205(d) of the FCU Act prohibits, without the prior written consent of the NCUA Board, a person convicted of any criminal offense involving dishonesty or breach of trust, or who has entered into a pretrial diversion or similar program in connection with a prosecution for such offense, from becoming or continuing as an institution-affiliated party, or otherwise participating, directly or indirectly, in the conduct of the affairs of an insured credit union. The NCUA Board is proposing to issue guidance and provide additional information to the public regarding this provision in the form of an IRPS. NCUA believes public comment on this IRPS will be helpful, and NCUA encourages interested members of the public to provide their comments. NCUA also solicits input from the public as to whether the format of this guidance as an IRPS is appropriate or whether a regulation would be more suitable.

### B. Background

Under Section 205(d)(1) of the FCU Act, except with the prior written consent of the NCUA Board, a person who has been convicted of any criminal offense involving dishonesty or breach of trust, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense may not:

- Become, or continue as, an institution affiliated party with respect to any insured credit union; or
- Otherwise participate, directly or indirectly, in the conduct of the affairs of any insured credit union.

Section 205(d)(1)(B) further provides that an insured credit union may not allow any person described above to participate in the affairs of the credit union without NCUA Board consent. Section 205(d)(2) imposes a ten-year ban against the NCUA Board's consent for a person convicted of certain crimes enumerated in Title 18 of the United States Code, absent a motion by the NCUA Board and approval by the sentencing court. Finally, Section 205(d)(3) states that ''whoever knowingly violates'' (d)(1)(A) or (d)(1)(B) commits a felony, punishable by up to five years in jail and a fine of up to $1,000,000 a day.

Section 19 of the Federal Deposit Insurance Act (FDIA) contains a prohibition provision similar to Section 205(d) of the FCU Act. The Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervision (OTS) have published guidance regarding prohibitions imposed by Section 19 of the FDIA.[1]

The NCUA Board has not previously adopted any policies or regulations concerning how it analyzes the conduct of an applicant when deciding whether or not to grant consent to participate pursuant to Section 205(d). Section 205(d) itself imposes no guidance or limitations on the information that the NCUA Board may consider. The Board has on occasion looked to the FDIC's SOP for guidance in the past when reviewing the limited number of prior requests for consent under Section 205(d). However, in light of several recent applications requesting the NCUA Board's consent pursuant to Section 205(d), the Board believes it may now be appropriate to issue its own guidance on this topic. In light of the FDIC's greater experience in this area, NCUA has drawn upon the FDIC SOP extensively in creating the proposed IRPS.

NCUA is especially concerned that many insured credit unions, as well as institution affiliated parties, may not be aware of the prohibition imposed by Section 205(d). NCUA believes that the issuance of an IRPS will help put the credit union community on notice of Section 205(d) so that insured credit unions can properly screen prospective employees prior to making hiring decisions. Furthermore, credit unions that failed to adequately examine prospective employees before hiring will now be on notice of the need to examine their workforce to ensure their compliance with Section 205(d).

NCUA recognizes that certain offenses are so minor and occurred so far in the past so as to not present a risk to the insured credit union. For that reason, NCUA is proposing to exclude certain de minimis offenses that meet specified requirements and juvenile offenses from the need to request consent from the Board.

The IRPS also establishes the procedures that an applicant seeking the necessary approval of the NCUA Board must follow. The proposed IRPS requires that an application for the NCUA Board's consent ''should thoroughly explain the circumstances surrounding the conviction or pretrial diversion program'' and ''demonstrate that, notwithstanding the bar, the person is fit to participate in the conduct of the affairs of an insured credit union without posing a risk to its

[1] See, FDIC Statement of Policy Pursuant to Section 19 of the Federal Deposit Insurance Act, (63 FR 66177) (Dec. 1, 1998) (FDIC's SOP) and also the FDIC's rules at 12 CFR part 303, subpart L and 12 CFR part 308, subpart M. And see also the OTS' rules at 12 CFR Parts 509 and 585.

safety and soundness or impairing public confidence in that institution''. The NCUA Board invites comments as to whether such an unstructured application or a more formalized application utilizing a form, similar to that used by the FDIC, is preferred. A copy of the FDIC form is attached.

The proposed IRPS establishes that the burden of proof for convincing the NCUA Board to grant consent rests with the applicant. Further, the IRPS sets out the criteria and factors the NCUA Board will consider when reviewing requests for consent. Lastly, the proposed IRPS explains the appeal rights available to applicants if the NCUA Board withholds consent under Section 205(d).

**C. Regulatory Procedures**

*Regulatory Flexibility Act*

The Regulatory Flexibility Act requires that NCUA prepare an analysis describing any significant economic impact agency rulemaking may have on a substantial number of small credit unions. 5 U.S.C. 601 *et seq.* For purposes of this analysis, NCUA considers credit unions under $10 million in assets as small credit unions. Since the requirements in this IRPS are generally restatements of requirements in other laws, NCUA does not believe this proposed IRPS will have a significant economic impact on a substantial number of small credit unions. NCUA invites the public to comment on this issue.

*Paperwork Reduction Act*

This proposed IRPS contains an application requirement. Any insured credit union that wishes to seek a waiver for a person who is prohibited under Section 205(d) because of a prior conviction for any crime involving dishonesty or breach of trust, or a pretrial diversion or similar program in connection with a prosecution for such crime, must apply for the NCUA Board's written approval before such person may participate in its affairs. NCUA has not mandated any specific requirements for this application, but anticipates it will consist of a letter to the NCUA Board requesting approval and briefly describing the nature of the prior conviction or pretrial diversion, along with an explanation or justification as to why the Board should grant consent for the person's participation in the affairs of an insured credit union. Additionally, NCUA anticipates that insured credit unions submitting an application may also address the specific factors identified in this IRPS that the Board will consider when reviewing applications for consent.

NCUA requests public comment on all aspects of the collection of information in this proposed IRPS, including whether a specific form should be required. NCUA believes that a relatively small amount of time will be necessary for the development of an application for consent under Section 205(d) because in many cases the persons prohibited will have in their possession copies of the necessary documentation pertaining to their prior convictions. In cases where the individuals do not have the necessary documentation, either the persons or the insured credit unions will have to contact the respective courts to obtain copies of the documentation. In addition to obtaining copies of documentation pertaining to the prior convictions, the insured credit unions must draft a letter to serve as the application to request the Board's consent. Based on the length of prior applications under Section 205(d), NCUA estimates a burden of two hours per insured credit union and will revisit this estimate in light of the comments NCUA receives.

NCUA will submit the collection of information requirements contained in the IRPS to the OMB in accordance with the Paperwork Reduction Act of 1995. 44 U.S.C. 3507. NCUA will use any comments received to develop its new burden estimates. Comments on the collections of information should be sent to Office of Management and Budget, Reports Management Branch, New Executive Office Building, Room 10202, Washington, DC 20503; Attention: Mark Menchik, Desk Officer for NCUA. Please send NCUA a copy of any comments you submit to OMB.

The likely respondents are insured credit unions.

*Estimated annual number of respondents:* 3.

*Estimated average annual burden hours per respondent:* 2 hours.

*Estimated total annual disclosure and recordkeeping burden:* 6 hours.

NCUA invites comment on:

(1) The accuracy of NCUA's estimate of the burden of the information collections;

(2) Whether a specific form, similar to the attached form required by the FDIC, should be required for the information collections;

(3) Ways to minimize the burden of the information collections on insured credit unions, including the use of automated collection techniques or other forms of information technology; and

(4) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Recordkeepers are not required to respond to this collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. NCUA is currently requesting a control number for this information collection from OMB.

*Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This proposed IRPS applies to all credit unions, but does not have 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. NCUA has determined that this proposed IRPS does not constitute a policy that has federalism implications for purposes of the executive order.

*The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that the proposed IRPS would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act of 1999, Public Law 105–277, 112 Stat. 2681 (1998).

By the National Credit Union Administration Board, on March 20, 2008.

**Mary Rupp,**

*Secretary of the Board.*

**Authority:** 12 U.S.C. 1752a, 1756, 1766, 1785.

*Interpretive Ruling and Policy Statement 08–1.*

**Guidance Regarding Prohibitions Imposed by Section 205(d) of the Federal Credit Union Act**

**I. Background**

This Interpretive Ruling and Policy Statement (IRPS) provides requirements, direction, and guidance to federally-insured credit unions and individuals regarding the prohibition imposed by operation of law by Section 205(d) of the Federal Credit Union Act (FCU Act) (12 U.S.C. 1785(d)). Section 205(d)(1) provides that, except with the prior written consent of the National Credit

Union Administration (NCUA) Board, a person who has been convicted of any criminal offense involving dishonesty or breach of trust, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense may not:

- Become, or continue as, an institution affiliated party with respect to any insured credit union; or
- Otherwise participate, directly or indirectly, in the conduct of the affairs of any insured credit union.

Section 205(d)(1)(B) further provides that an insured credit union may not allow any person described above to engage in any conduct or to continue any relationship prohibited by Section 205(d). The statute imposes a ten-year ban against the NCUA Board's consent for a person convicted of certain crimes enumerated in Title 18 of the United States Code, absent a motion by the NCUA Board and approval by the sentencing court. (Section 205(d)(2)). Finally, Section 205(d)(3) states that ''whoever knowingly violates'' (d)(1)(A) or (d)(1)(B) is committing a felony, punishable by up to five years in jail and a fine of up to $1,000,000 a day.

This IRPS provides guidance to credit unions and individuals as to who is subject to the prohibition provision of Section 205(d). Similarly, the IRPS defines what offenses come within the prohibition provision of Section 205(d) and thus require an application for the NCUA Board's consent to participate in the affairs of an insured credit union. The IRPS also identifies certain offenses that will be excluded from Section 205(d) and do not require the NCUA Board's consent. In order to assist those who may need the consent of the NCUA Board to participate in the affairs of an insured credit union, the IRPS explains the procedures to request such consent, clarifies the duty imposed on credit unions by Section 205(d), and identifies the factors the NCUA Board will consider in deciding whether to provide such consent. Finally, the IRPS explains how an applicant could appeal a decision by the NCUA Board denying an application for its consent.

## II. Policies and Procedures Regarding Prohibitions Imposed by Section 205(d)

### *A. Scope of Section 205(d) of the FCU Act*

1. Persons covered by Section 205(d)

- *Institution-affiliated parties.*

Section 205(d) of the FCU Act applies to institution-affiliated parties, as defined by Section 206(r) of the FCU Act (12 U.S.C. 1786(r)), and others who are participants in the conduct of the affairs of an insured institution. Institution-affiliated party means:

(1) Any committee member, director, officer, or employee of, or agent for, an insured credit union;

(2) any consultant, joint venture partner, and any other person as determined by the Board (by regulation or on a case-by case basis) who participates in the conduct of the affairs of an insured credit union; and

(3) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in—

(A) any violation of any law or regulation;

(B) any breach of fiduciary duty; or

(C) any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured credit union. (Section 206(r)).

Therefore, all officials, committee members and employees of an insured credit union fall within the scope of Section 205(d) of the FCU Act. Additionally, anyone NCUA determines to be a de facto employee, applying generally applicable standards of employment law, will also be subject to Section 205(d).

Under Section 206(r), independent contractors are considered institution-affiliated parties if they knowingly or recklessly participate in violations, unsafe or unsound practices or breaches of fiduciary duty which are likely to cause significant loss to, or a significant adverse effect on, an insured credit union. As a general rule, an independent contractor who influences or controls the management or affairs of an insured credit union, would be covered by Section 205(d). In addition, a ''person''' for purposes of Section 205(d) means an individual, and does not include a corporation, firm or other business entity.

- *Participants in the affairs of an insured credit union.*

A person who does not meet the definition of institution-affiliated party is nevertheless prohibited by Section 205(d) if he or she is considered to be participating, directly or indirectly, in the conduct of the affairs of an insured credit union. This is a term of art and is not capable of precise definition. As the OTS stated in the preamble to its regulation regarding Section 19 of the FDIA:

> Given the changes in banking, including financial modernization and the rapid pace of technology, a regulatory listing of activities that constitute participation is neither practical nor advisable. Accordingly, like FDIC's SOP, the interim final rule does not define precisely what activities constitute ''participation.'' Rather, agency and court decisions will provide the guide as to what standards will be applied. As a general proposition, however, participation will depend upon the degree of influence or control over the management or affairs of the [insured credit union]. Those who exercise major policymaking functions at [an insured credit union] would fall within this category.

72 FR 25948, at 25949 (May 8, 2007).

NCUA agrees with that view and will likewise not define what constitutes participation in the conduct of the affairs of an insured credit union but rather will analyze each individual's conduct on a case-by-case basis to determine if their conduct amounts to participating in the affairs of an insured credit union.

2. Offenses Covered by Section 205(d)

Except as indicated in paragraph (3), below, an application requesting the consent of the NCUA Board under Section 205(d) is required where any adult, or minor treated as an adult, has received a conviction by a court of competent jurisdiction for any criminal offense involving dishonesty or breach of trust (a covered offense), or where such person has entered a pretrial diversion or similar program regarding a covered offense. The following definitions apply:

(i) *Conviction.* There must be a conviction of record. Section 205(d) does not apply to arrests, pending cases not brought to trial, acquittals, or any conviction which has been reversed on appeal. A conviction with regard to which an appeal is pending will require an application until or unless reversed. A conviction for which a pardon has been granted will require an application.

(ii) *Pretrial Diversion or Similar Program.* A pretrial diversion program, whether formal or informal, is characterized by a suspension or eventual dismissal of charges or criminal prosecution upon agreement by the accused to treatment, rehabilitation, restitution, or other non-criminal or non-punitive alternatives. Whether a program constitutes a pretrial diversion is determined by relevant federal, state or local law, and will be considered by the NCUA Board on a case-by-case basis.

(iii) *Dishonesty or Breach of Trust.* The conviction or entry into a pretrial diversion program must have been for a criminal offense involving dishonesty or breach of trust.

''*Dishonesty*'' means directly or indirectly to cheat or defraud; to cheat or defraud for monetary gain or its equivalent; or wrongfully to take property belonging to another in

violation of any criminal statute. Dishonesty includes acts involving want of integrity, lack of probity, or a disposition to distort, cheat, or act deceitfully or fraudulently, and may include crimes which federal, state or local laws define as dishonest.

''*Breach of trust*'' means a wrongful act, use, misappropriation or omission with respect to any property or fund which has been committed to a person in a fiduciary or official capacity, or the misuse of one's official or fiduciary position to engage in a wrongful act, use, misappropriation or omission.

Whether a crime involves dishonesty or breach of trust will be determined from the statutory elements of the crime itself. All convictions for offenses concerning the illegal manufacture, sale, distribution of or trafficking in controlled substances shall require an application for the NCUA Board's consent under Section 205(d).

3. Offenses *Not* Covered by Section 205(d)

(i) *De minimis Offenses.* Approval is automatically granted and an application for the NCUA Board's consent under Section 205(d) will not be required where the covered offense is considered de minimis, because it meets *all* of the following criteria:

- There is only one conviction or entry into a pretrial diversion program of record for a covered offense;
- The offense was punishable by imprisonment for a term of less than one year and/or a fine of less than $1,000, and the punishment imposed by the court did not include incarceration;
- The conviction or pretrial diversion program was entered at least five years prior to the date an application would otherwise be required;
- The offense did not involve an insured depository institution or insured credit union; and
- The NCUA Board or any other federal financial institution regulatory agency has not previously denied consent under Section 205(d) of the FCU Act or Section 19 of the FDIA, respectively, for the same conviction or participation in a pretrial diversion program.

Any person who meets the foregoing criteria must be covered by a fidelity bond to the same extent as other employees in similar positions. An insured credit union may not allow any person to participate in its affairs, even if that person has a conviction for what would constitute a de minimis covered offense, if the person cannot obtain required fidelity bond coverage.

Any person who meets the foregoing criteria for a de minimis offense shall disclose the presence of the conviction or pretrial diversion program to all insured credit unions or other insured institutions in the affairs of which he or she intends to participate.

(ii) *Youthful Offender Adjudgments.* An adjudgment by a court against a person as a ''youthful offender'' under any youth offender law, or any adjudgment as a ''juvenile delinquent'' by any court having jurisdiction over minors as defined by state law does not require an application for the NCUA Board's consent under Section 205(d). Such adjudications will not be considered convictions for criminal offenses.

(iii) *Expunged convictions.* A conviction which has been completely expunged is not considered a conviction of record and will not require an application for the NCUA Board's consent under Section 205(d).

*B. Duty Imposed on Credit Unions*

Section 205(d) imposes a duty upon every insured credit union to make a reasonable inquiry regarding the history of every applicant for employment. NCUA believes that inquiry should consist of taking steps appropriate under the circumstances, consistent with applicable law, to avoid hiring or permitting participation in its affairs by a person who has a conviction or participation in a pretrial diversion program for a covered offense. The NCUA believes that at a minimum, each insured credit union should establish a screening process which provides the insured credit union with information concerning any convictions or pretrial diversion programs pertaining to a job applicant.

This would include, for example, the completion of a written employment application which requires a listing of all convictions and pretrial diversion programs. When the credit union learns that a prospective employee has a prior conviction or entered into a pretrial diversion program for a covered offense, the credit union must submit an application requesting the NCUA Board's consent under Section 205(d) prior to hiring the person or otherwise permitting him or her to participate in its affairs.

If an insured credit union discovers that an employee, official, or anyone else who is an institution-affiliated party or who participates, directly or indirectly, in its affairs, is in violation of Section 205(d), the credit union must immediately place that person on a temporary leave of absence from the credit union and file an application seeking the NCUA Board's consent under Section 205(d). The person must remain on such temporary leave of absence until such time as the NCUA Board has acted on the application. When NCUA learns that an institution-affiliated party or a person participating in the affairs of an insured credit union should have received the NCUA Board's consent under Section 205(d) but did not, NCUA will look at the circumstances of each situation to determine whether the inquiry made by the credit union was reasonable under the circumstances.

*C. Procedures for Requesting the NCUA Board's Consent Under Section 205(d)*

Section 205(d) of the FCU Act serves, by operation of law, as a statutory bar to participation in the affairs of an insured credit union, absent the written consent of the NCUA Board. When an application for the NCUA Board's consent under Section 205(d) is required, the insured credit union must file a written application with the appropriate NCUA Regional Director. The purpose of an application is to provide the applicant an opportunity to demonstrate that, notwithstanding the bar, the person is fit to participate in the conduct of the affairs of an insured credit union without posing a risk to its safety and soundness or impairing public confidence in that institution. Such an application should thoroughly explain the circumstances surrounding the conviction or pretrial diversion program. The application should also address the relevant factors and criteria the NCUA Board will consider in determining whether to grant consent, specified below. The burden is upon the applicant to establish that the application warrants approval.

The application must be filed by an insured credit union on behalf of a person unless the NCUA Board grants a waiver of that requirement. Such waivers will be considered on a case-by-case basis where substantial good cause for granting a waiver is shown.

*D. Evaluation of Section 205(d) Applications*

The essential criteria used by the NCUA Board in assessing an application for consent under Section 205(d) are whether the person has demonstrated his or her fitness to participate in the conduct of the affairs of an insured credit union, and whether the employment, affiliation, or participation by the person in the conduct of the affairs of the insured credit union may constitute a threat to the safety and soundness of the institution or the interests of its members or threaten to impair public confidence in the insured credit union.

In evaluating an application, the NCUA Board will consider:

(1) The conviction or pretrial diversion program and the specific nature and circumstances of the covered offense;

(2) Evidence of rehabilitation, including the person's reputation since the conviction or pretrial diversion program, the person's age at the time of conviction or pretrial diversion program, and the time which has elapsed since the conviction or pretrial diversion program;

(3) The position to be held or the level of participation by the person at the insured credit union;

(4) The amount of influence and control the person will be able to exercise over the management or affairs of the insured credit union;

(5) The ability of management of the insured credit union to supervise and control the person's activities;

(6) The applicability of the insured institution's fidelity bond coverage to the person;

(7) For state chartered, federally insured credit unions, the opinion or position of the state regulator; and

(8) Any additional factors in the specific case that appear relevant.

The foregoing criteria will also be applied by the NCUA Board to determine whether the interests of justice are served in seeking an exception in the appropriate court when an application is made to terminate the ten-year ban for certain enumerated offenses in violation of Title 18 of the United States Code prior to its expiration date. NCUA believes such requests will be extremely rare and will be made only upon a showing of compelling reasons.

Some applications can be approved without an extensive review because the person will not be in a position to present any substantial risk to the safety and soundness of the insured credit union. Persons who will occupy clerical, maintenance, service or purely administrative positions, generally fall into this category. A more detailed analysis will be performed in the case of persons who will be in a position to influence or control the management or affairs of the insured credit union. Approval by the NCUA Board will be subject to the condition that the person shall be covered by a fidelity bond to the same extent as others in similar positions.

In cases in which a waiver of the institution filing requirement has been granted to an individual, approval of the application will be conditioned upon that person disclosing the presence of the conviction to all insured credit unions or other insured financial institutions in the affairs of which he or she wishes to participate. When deemed appropriate, approval may also be subject to the condition that the prior consent of the NCUA Board will be required for any proposed significant changes in the person's duties and/or responsibilities. Such proposed changes may, in the discretion of the appropriate Regional Director, require a new application for the NCUA Board's consent. When approval has been granted for a person to participate in the affairs of a particular insured credit union and subsequently that person seeks to participate in the affairs of another insured credit union, approval does not automatically follow. In such cases, another application must be submitted. Moreover, any person who has received consent from the NCUA Board under Section 205(d) and subsequently wishes to become an institution affiliated party or participate in the affairs of an FDIC-insured institution, he or she must obtain the prior approval of the FDIC pursuant to Section 19 of the FDIA.

*E. Appeal Rights Following the Denial of an Application Under Section 205(d)*

If the NCUA Board withholds consent under Section 205(d), the insured credit union (or in the case where a waiver has been granted, the individual that submitted the application) may request a hearing by submitting a written request within 30 days following the date of the NCUA Board's action. The NCUA Board will apply the process contained in regulations governing prohibitions based on felony convictions, found at Part 747, Subpart D of Title 12, Code of Federal Regulations, to any request for a hearing. The insured credit union (or in the case where a waiver has been granted, the individual that submitted the application) may also waive a hearing and request that the NCUA Board determine the matter on the basis of written submissions.

BILLING CODE 7535–01–P

OMB No.: 3064-0018
Expiration Date: 09/30/2009

**Federal Deposit Insurance Corporation**

CORPORATION GUIDELINES AND POLICIES WITH RESPECT TO SECTION 19

Public reporting burden for this collection of information is estimated to average 16 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Assistant Executive Secretary (Administration), Room 6096, FDIC, Washington, DC 20429; and to the Office of Management and Budget, Paperwork Reduction Project (3064-0018), Washington, DC 20503

On September 27, 1968, the Federal Deposit Insurance Corporation's Chairman addressed the following memorandum to all insured banks.

"The Federal Deposit Insurance Corporation has for some time been studying in detail Section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829), relating to the requirement for this Corporation's consent prior to any insured bank employing persons who have been convicted of crimes involving dishonesty or breach of trust.

"Section 19 provides as follows:

'Except with the written consent of the Corporation no person shall serve as a director, officer, or employee of an insured bank who has been *convicted,* or who is hereafter convicted of any *criminal offense involving dishonesty or breach of trust.* For each willful violation of this prohibition, the bank involved shall be subject to a penalty of not more than $100 for each day this prohibition is violated, which the Corporation may recover for its use.'

"Since the enactment of this law in 1950, our Board has reviewed cases coming under it on an ad hoc basis and each case has been judged on its own merits according to the particular facts and circumstances involved. The need for guidelines and standards to be applied prospectively has increased in recent years. Inquiries continue to come in from banking institutions asking what standards should be applied by them in determining whether an application under Section 19 is required. In addition, programs are now underway on both the Federal and state levels to hire and retrain the hardcore unemployed, some of whom may have criminal records, and the banking community will no doubt participate in these programs to some degree. For these reasons, the Board of Directors has adopted the following general guidelines and policies with respect to Section 19. It is our hope that these guidelines will be of assistance to all banks having questions concerning the applicability of our law, and that they will, at the same time, serve to insure the continuing stability and confidence in our banking system."

## I. STANDARDS TO BE APPLIED IN DETERMINING WHETHER AN APPLICATION FOR CONSENT IS REQUIRED UNDER SECTION 19

A. There must be present a *conviction of record.* Arrests, pending cases not brought to trial, acquittals, or any conviction which has been reversed on appeal will be excluded from the requirements of Section 19. A conviction which is being appealed will require a Section 19 application until or unless otherwise reversed.

B. The conviction must be for a *criminal offense involving dishonesty or breach of trust.* Felonies as well as misdemeanors wherein dishonesty or breach of trust is involved are included within the definition. Dishonesty is defined to mean "to cheat or defraud for monetary gain or its equivalent, directly or indirectly, or to wrongfully take from any person, property lawfully belonging to that person in violation of any criminal statute or code." [Acts of dishonesty are further defined to include, but not limited to, such acts which involve want of integrity, lack of probity, or involve a disposition to distort, defraud, cheat or to act deceitfully or fraudulently. Furthermore, dishonesty may also include crimes which by federal or state criminal statutes and codes are defined as dishonest.] Breach of trust is defined to mean "a wrongful use, misappropriation, or omission with respect to any property or fund which has been lawfully committed to a person in a fiduciary capacity."

C. Youth Offenders

1. Adjudgment by a court against a person as a "youthful offender" under any youth offender law or adjudgement as a "juvenile delinquent" by a family court or any other court having jurisdiction over minors as defined by state law will not require an application under Section 19. Such adjudications are not considered convictions for criminal offenses.

D. Adults and All Minors Convicted of Crimes

1. The conviction of any adult or minor by a court of competent jurisdiction for any criminal offense involving dishonesty or breach of trust as defined in paragraph B above will require an application for consent prior to a bank's employment of that person.

## II. THE CORPORATION'S POLICY WITH RESPECT TO APPLICATIONS MADE UNDER SECTION 19

A. In considering any application made by an insured bank to employ a person who has been convicted of a criminal offense involving dishonesty or breach of trust, the factors to be considered will include but will not be limited to the following:

1. The specific nature of the offense involved and the circumstances surrounding it.
2. The evidence of rehabilitation of the person since the date of his/her conviction (parole, suspension of sentence, and reputation of the person since conviction will be given consideration. Participation by the person in programs on the national or state levels to hire and retrain the hard-core unemployed also will be given consideration.
3. The age of the person at the time of his/her conviction
4. The position to be held by the person in the bank.
5. The fidelity bond coverage applicable (or to be applicable) to the person."

## CORPORATION STATEMENT OF POLICY

The Board of Directors of the Federal Deposit Insurance Corporation approved the following statement of policy at its offices in Washington, D.C., on the 21st day of September, 1976:

The Corporation does not view Section 19 as being punitive in intent. Rather, the essential criterion in assessing such applications is whether the prospective director, officer, or employee constitutes a significant threat or risk to the safety and soundness of the applicant bank, and our policy is to approve applications in which this risk is absent.

Existing Corporation policy on Section 19 applications has involved consideration of the nature and circumstances of the offense, the evidence of rehabilitation, the position to be held by the employee in the bank and the applicability of the bank's fidelity bond coverage to the employee. These remain important considerations in determining the risk to the bank in the employment of the prospective employee.

On this basis, many applications can be routinely approved because the prospective employee will not be in a position to constitute any substantial risk to the safety and soundness of the bank. Employees who will occupy clerical, maintenance, or service positions or, in many banks, administrative or teller positions generally pose no such risk, and on application from the board of directors of the bank, normally will be able to be routinely approved. A more detailed analysis will be required in the case of directors, officers, or other employees in a position to control or influence the disposition of sums of money large in relation to the size of the bank.

FEDERAL DEPOSIT INSURANCE CORPORATION

## APPLICATION PURSUANT TO SECTION 19 OF THE FEDERAL DEPOSIT INSURANCE ACT

**SECTION A - APPLICANT BANK INFORMATION**

| 1. NAME OF BANK | 2. DATE OF APPLICATION |
|---|---|
| | |

3. ADDRESS OF BANK *(Street, City, County, State and ZIP Code)*

We have, in connection with this Request, read the following provision of the Federal Deposit Insurance Act which governs requests by insured banks for the consent of the Federal Deposit Insurance Corporation to the employment, by the Bank, of a person who has been convicted of a crime involving dishonesty or breach of trust, namely:

> *"Section 19. Except with the written consent of the Corporation, no person shall serve as a director, officer, or employee of an insured bank who has been convicted, or who is hereafter convicted, of any criminal offense involving dishonesty or a breach of trust. For each willful violation of this prohibition, the bank involved shall be subject to a penalty of not more than $100 for each day this prohibition is violated, which the Corporation may recover for its use."*

In support of this Request, the following statements, representations and information are submitted for the purpose of inducing the Federal Deposit Insurance Corporation to grant its written consent to the service as a director, officer, or employee of the bank, a person who has been convicted of a crime involving dishonesty or a breach of trust:

**SECTION B - BIOGRAPHICAL INFORMATION CONCERNING THE PROSPECTIVE DIRECTOR, OFFICER, OR EMPLOYEE**

| | |
|---|---|
| 1. NAME | 2. ADDRESS *(Street, City, State and ZIP Code)* |
| 3. DATE OF BIRTH *(Mo., Day, Yr.)* | |
| 4. PLACE OF BIRTH *(City and State)* | |
| 5. SOCIAL SECURITY NUMBER | |

6. NAME AND ADDRESS OF PRESENT OR MOST RECENT EMPLOYER *(Street, City, State and ZIP Code)*

7 INDICATE TOTAL NUMBER OF VOTING SHARES OF THE BANK'S STOCK DIRECTLY OR INDIRECTLY OWNED OR OTHERWISE CONTROLLED. *(Answer "none" if appropriate.)*

**SECTION C - INFORMATION RELATIVE TO CONVICTION(S)**

| 1. DESCRIPTION OR NATURE OF CRIME (a) | DATE OF CONVICTION (b) | NAME AND ADDRESS OF COURT (c) | DISPOSITION (d) |
|---|---|---|---|
| | | | |

*NOTE: If additional convictions for crimes involving dishonesty or breach of trust are discovered subsequent to approval of this request, another request may be necessary.*

2. Briefly describe the nature of the offense and the circumstances surrounding it. Include age of prospective employee at the time of conviction, date of the offense, and any mitigating circumstances *(parole, suspension of sentence, pardon, etc.)*.

3. Briefly describe the extent of rehabilitation of the prospective director, officer, or employee and attach supporting documents, if any

4. Attach copies of the Indictment, Information, or Complaint and Final Decree of Judgment, if available. *(Normally these can be obtained from the clerk of the court. If not provided, explain reasons for unavailability).*

5. List any other pertinent facts relative to the crime which are not disclosed in the indictment.

I do hereby certify that the Biographical Information (Section B) and Information Relative to Conviction (Section C) are true and correct to the best of my knowledge and belief

| SIGNATURE OF PROSPECTIVE DIRECTOR, OFFICER OR EMPLOYEE | DATE SIGNED |
|---|---|
| | |

NOTE: The information requested in Sections B and C above, including the Social Security Number of the prospective director, officer or employee, is solicited pursuant to Section 19 of the Federal Deposit Insurance Act (12 U.S.C §1829). This information is necessary to assist the FDIC in assessing the merits of the application. Some of the information, including the Social Security Number, may be provided to any appropriate Federal or State bank regulatory agency and, law enforcement or other governmental agencies for identity verification purposes. Should the information indicate a violation of law, the application may be referred to any agency responsible for investigating or prosecuting such a violation In addition, in the event of litigation, the application may be presented to the appropriate court as evidence and to counsel in the course of discovery. While submission of the information is voluntary, an omission or inaccuracy may result either in delay in processing the application or in a denial of the application. Falsification of any of the information may serve as a basis for removal of the director, officer or employee if employed by the bank and as grounds for criminal charges.

## SECTION D - POSITION TO BE OCCUPIED BY THE PROSPECTIVE DIRECTOR, OFFICER OR EMPLOYEE

1 TITLE OF POSITION (S)

2. Describe the duties and responsibilities of the prospective director, officer or employee. Include extent of supervision exercised over others and/or by others.

*NOTE: Should this request be approved, any significant change in the duties and/or responsibilities of the prospective director, officer or employee which occurs within 12 months subsequent to such approval must be reported in writing to the Regional Director of the Federal Deposit Insurance Corporation Region in which the bank is located.*

## SECTION E - NOTIFICATION OF FIDELITY INSURER

**The bank's fidelity insurer is to be notified of all pertinent information regarding the conviction of the prospective employee. Assurances from the fidelity insurer must be obtained, in writing, stating that the prospective director (if applicable), officer, or employee will be covered by the bank's fidelity bond.**

This application and the information requested herein may be submitted prior to notification of the bonding company; however, the Corporation's consent will be subject to a condition that written assurance of fidelity coverage to the same extent as others in similar positions be obtained by the bank.

## SECTION F - ADDITIONAL INFORMATION IN SUPPORT OF THIS REQUEST

List any other appropriate information

| I do hereby certify that the Board of Directors adopted a resolution which delegated the undersigned the authority to make applications pursuant to Section 19 of the Federal Deposit Insurance Act or has adopted a resolution authorizing this application pursuant to Section 19 of the Federal Deposit Insurance Act. | |
|---|---|
| | |
| SIGNATURE OF BANK OFFICIAL | |

**This is an official document of the Federal Deposit Insurance Corporation. Providing false information may be grounds for prosecution under the provisions of Title 18, Section 1001 or 1007 of the United States Code and may be punishable by fine or imprisonment.**

FDIC 6710/07 (Page Three)

[FR Doc. E8–6031 Filed 4–3–08; 8:45 am]

BILLING CODE 7535–01–C

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Polar Programs; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Polar Programs (1130).

*Date/Time:* May 29, 2008, 8 a.m. to 5 p.m. May 30, 2008, 8 a.m. to 3 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 1235.

*Type of Meeting:* Open.

*Contact Person:* Sue LaFratta, Office of Polar Programs (OPP). National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8030.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To advise NSF on the impact of its policies, programs, and activities on the polar research community, to provide advice to the Director of OPP on issues related to long-range planning.

*Agenda:* Staff presentations and discussion on opportunities and challenges for polar research, education and infrastructure; program organization and balance; Antarctic Support Committee of Visitors; transformative research; and overall dimensions of NSF's IPY activity and how it relates to IPY activity worldwide.

Dated: April 1, 2008.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. E8–7066 Filed 4–3–08; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

### Draft Regulatory Guide: Issuance, Availability

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance, Availability of Draft Regulatory Guide (DG)–1194.

**FOR FURTHER INFORMATION CONTACT:** M. Lintz, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–4051 or e-mail: *MPL2@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a draft guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide entitled ''Guidance to Operators at the Controls and to Senior Operators in the Control Room of a Nuclear Power Unit'' is temporarily identified by its task number, DG–1194, which should be mentioned in all related correspondence.

This guide describes staffing practices and methods generally considered by the NRC to be satisfactory for complying with the Commission's regulations that require the presence of an operator at the controls of a nuclear power unit and a senior operator in the control room. These practices and methods are the result of NRC review of operating experience and they reflect the latest methods and approaches acceptable to the NRC staff. If future information results in alternative methods, the NRC staff will review such methods to determine their acceptability.

### II. Further Information

The NRC staff is soliciting comments on DG–1194. Comments may be accompanied by relevant information or supporting data, and should mention DG–1194 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Personal information will not be removed from your comments. You may submit comments by any of the following methods:

1. *Mail comments to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. *E-mail comments to: NRCREP@nrc.gov*.

3. *Hand-deliver comments to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

4. *Fax comments to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about DG–1194 may be directed to the NRC Senior Program Manager, M. Lintz, at (301) 415–4051 or e-mail at *MPL2@NRC.Gov*.

Comments would be most helpful if received by June 6, 2008. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–1194 are available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML080220459.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *PDR@nrc.gov*.

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Dated at Rockville, Maryland, this 31st day of March, 2008.

For the Nuclear Regulatory Commission.

**Andrea D. Valentin,**

*Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. E8–7053 Filed 4–3–08; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 040–09027]**

### Notice of License Termination and Release of the Cabot Site in Reading, PA, for Unrestricted Release

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of License Termination and Site Release for Unrestricted Use.

**FOR FURTHER INFORMATION CONTACT:** Theodore B. Smith, Reactor Decommissioning Branch, Division of Waste Management and Environmental Protection, NRC, Washington, DC 20555; telephone (301) 415–6721; fax (301) 415–5369; or e-mail at *tbs1@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

Pursuant to 10 CFR 2.106, the U.S. Nuclear Regulatory Commission (NRC) is providing notice that it is terminating license SMC–1562 for Cabot Corporation (Cabot or Licensee), and releasing the Cabot site in Reading, PA, for unrestricted use. The Licensee's request for an amendment to authorize decommissioning of the site in Reading, PA, was previously noticed in the **Federal Register** on October 28, 1998, (FR Doc. 98–28815) with a notice of an opportunity to request a hearing.

Cabot provided a final radiological status survey and performed dose analyses to demonstrate the site meets the license termination criteria in Subpart E of 10 CFR part 20. In addition, NRC staff conducted independent measurements of residual radioactivity remaining at the site.

The NRC staff has evaluated the Cabot license termination request, and has reviewed the results of the final radiological survey. The NRC staff has performed confirmatory measurements throughout the site property in order to verify that Cabot's previously approved decommissioning plan has been properly implemented. The NRC finds that the site cleanup meets the unrestricted release dose criteria in 10 CFR 20.1402, and concludes that the site is suitable for release for unrestricted use. Accordingly, the license for the Cabot Reading, PA site is being terminated. The staff prepared a Safety Evaluation Report (SER) to support this action.

## II. Further Information

In accordance with 10 CFR 2.790 of the NRC's ''Rules of Practice,'' details with respect to this action, including the SER, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the document, ''Safety Evaluation Report for Issuance of Amendment No. 10 to Materials License No. SMC–1562, Cabot Corporation)'' is ADAMS No. ML080650826. If you do not have access to ADAMS or if there are problems in accessing a document located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1(800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at NRC, Rockville, MD, this 31st day of March, 2008.

For the Nuclear Regulatory Commission.

**Keith I. McConnell,**

*Deputy Director, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.*

[FR Doc. E8–7049 Filed 4–3–08; 8:45 am]

**BILLING CODE 7590–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 28229; 812–13500]**

## Franklin California Tax-Free Income Fund, et al.; Notice of Application

March 31, 2008.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from rule 12d1–2(a) under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit funds of funds relying on rule 12d1–2 under the Act to invest in certain financial instruments.

**APPLICANTS:** Franklin California Tax-Free Income Fund, Franklin California Tax-Free Trust, Franklin Capital Growth Fund, Franklin Custodian Funds, Franklin Federal Tax-Free Income Fund, Franklin Floating Rate Master Trust, Franklin Global Trust, Franklin Gold And Precious Metals Fund, Franklin High Income Trust, Franklin Investors Securities Trust, Franklin Managed Trust, Franklin Municipal Securities Trust, Franklin Mutual Recovery Fund, Franklin Mutual Series Fund Inc., (''FMSF''), Franklin New York Tax-Free Income Fund, Franklin New York Tax-Free Trust, Franklin Real Estate Securities Trust, Franklin Strategic Mortgage Portfolio, Franklin Strategic Series, Franklin Tax-Free Trust, Franklin Templeton Global Trust, Franklin Templeton International Trust, Franklin Templeton Variable Insurance Products Trust, Franklin Value Investors Trust, Institutional Fiduciary Trust, Templeton China World Fund, Templeton Developing Markets Trust, Templeton Funds, Templeton Global Investment Trust, Templeton Global Opportunities Trust, Templeton Global Smaller Companies Fund, Templeton Growth Fund, Inc. (''TGF''), Templeton Income Trust, Templeton Institutional Funds, Inc. (''TIFI'')(collectively, ''Funds''), Franklin Advisers, Inc., Franklin Investment Advisory Services, LLC, Franklin Advisory Services, LLC, Fiduciary International, Inc., Franklin Templeton Investments Corp., Franklin Templeton Institutional, LLC, Franklin Templeton Investment Management Limited, Franklin Mutual Advisers, LLC, Templeton Investment Counsel, LLC, Templeton Global Advisors Limited, Templeton Asset Management Ltd. (collectively, ''Managers'') and Franklin/Templeton Distributors, Inc. (''FTDI'').

**FILING DATE:** The application was filed on February 22, 2008.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 25, 2008 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, One Franklin Parkway, San Mateo, California 94403–1906.

**FOR FURTHER INFORMATION CONTACT:** Lewis Reich, Senior Counsel, at (202) 551–6919, or Nadya B. Roytblat, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–1520 (telephone (202) 551–5850).

## Applicants' Representations

1. Each Fund is organized as a Delaware statutory trust or a Massachusetts business trust (except FMSF, TGF and TIFI, which are Maryland corporations) and is registered under the Act as an open-end

management investment company. Each Manager is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''), is a direct or indirect wholly owned subsidiary of Franklin Resources, Inc., and serves as the investment manager for one or more Funds and directly manages their assets. FTDI, a wholly owned subsidiary of Franklin Resources, Inc, serves as principal underwriter of the Funds' shares, and is registered as a broker-dealer under the Securities Exchange Act of 1934 (''Exchange Act''). Applicants request an exemption to the extent necessary to permit the Funds and their existing and future series and any other existing or future registered open-end management investment companies and their series that are in the same group of investment companies, as defined in section 12(d)(1)(G) of the Act, as the Funds (included in the term ''Funds'') that may invest in other Funds (''Underlying Funds'') in reliance on rule 12d1–2 under the Act to also invest in other financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'') consistent with their investment objectives, policies, strategies and limitations.

**Applicants' Legal Analysis**

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that the Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Funds to invest in Other Investments. Applicants assert that permitting the Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

**Applicants' Conditions**

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Prior to approving any investment advisory agreement under section 15 of the Act, the board of trustees of the appropriate Fund, including a majority of the trustees who are not ''interested persons'' as defined in section 2(a)(19) of the Act, will find that the advisory fees, if any, charged under the agreement are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any Underlying Fund or any other registered investment company that is not in the same group of investment companies as the Fund, in which the Fund may invest. Such findings, and the basis upon which the findings are made, will be recorded fully in the minute books of the appropriate Fund.

2. Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2), to the extent that it restricts any Fund from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–6966 Filed 4–3–08; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** [73 FR 17386, April 1, 2008].

**STATUS:** Closed Meeting.

**PLACE:** 100 F Street, NE., Washington, DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** Wednesday, April 2, 2008 at 10 a.m.

**CHANGE IN THE MEETING:** Cancellation of Meeting.

The Closed Meeting scheduled for Wednesday, April 2, 2008 has been cancelled.

For further information please contact the Office of the Secretary at (202) 551–5400.

Dated: April 1, 2008.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E8–7069 Filed 4–3–08; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### In the Matter of: The Alternative Energy Technology Center, Inc.; Order of Suspension of Trading

April 2, 2008.

It appears to the Securities and Exchange Commission that the public interest and the protection of investors require a suspension of trading in the securities of The Alternative Energy Technology Center, Inc. Questions have arisen concerning the company's reliance on Rule 504 of Regulation D of the Securities Act of 1933 in conducting a distribution of its securities, and the accuracy and adequacy of statements in the company's press releases regarding its rights to certain technology. The Alternative Energy Technology Center, Inc., a company that has made no public filings with the Commission, is quoted on the Pink Sheets under the ticker symbol AETE, and has recently been the subject of spam e-mail touting the company's shares.

The Commission is of the opinion that the public interest and the protection of the investors require a suspension of trading in 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, April 2, 2008, through 11:59 p.m. EDT, on April 15, 2008.

By the Commission.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. 08–1103 Filed 4–2–08; 10:16am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57579; File No. SR–NASDAQ–2008–026]**

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Participate in the Options Penny Pilot Program

March 28, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 25, 2008, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Nasdaq. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which rendered the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is planning to commence trading on its recently-approved NASDAQ Options Market[5] on March 31, 2008, and to participate from that date in the Options Penny Pilot Program by trading in penny increments all 63 options currently scheduled to be traded in penny increments on the six existing options exchanges.[6] Nasdaq's participation in the pilot will commence at the start of trading on the NASDAQ Options Market on March 31, 2008, and continue until March 27, 2009.

The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and *http://www.nasdaq.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, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On March 12, 2008, the Commission approved SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080, proposals to create the NASDAQ Options Market (''NOM''). Chapter VI, Section 5 of the approved rules states that Nasdaq may trade options in penny increments pursuant to the Commission's pilot program for options (''Penny Pilot Program''). Through this filing, Nasdaq proposes to establish the parameters of its participation in the Penny Pilot Program.

Prior to the Penny Pilot Program, options were quoted in nickel and dime increments. The minimum price variation for quotations in options series that are quoted at less than $3 per contract is $0.05 and the minimum price variation for quotations in options series that are quoted at $3 per contract or greater is $0.10.

Under the Penny Pilot Program, beginning on January 26, 2007, market participants were able to begin quoting in penny increments in certain series of option classes. The Penny Pilot Program originally included the following thirteen options: Ishares Russell 2000 (IWM); NASDAQ–100 Index Tracking Stock (QQQQ); SemiConductor Holders Trust (SMH); General Electric Company (GE); Advanced Micro Devices, Inc. (AMD); Microsoft Corporation (MSFT); Intel Corporation (INTC); Caterpillar, Inc. (CAT); Whole Foods Market, Inc. (WFMI); Texas Instruments, Inc. (TXN); Flextronics International Ltd. (FLEX); Sun Microsystems, Inc. (JAVA); and Agilent Technologies, Inc. (A).

On September 28, 2007, the following twenty-two options classes were added: SPDRs (SPY); Apple, Inc. (AAPL); Altria Group Inc. (MO); Dendreon Corp. (DNDN); Amgen Inc. (AMGN); Yahoo! Inc. (YHOO); QUALCOMM Inc. (QCOM); General Motors Corporation (GM); Energy Select Sector (XLE); DIAMONDS Trust, Series 1 (DIA); Oil Services HOLDRs (OIH); NYSE Euronext, Inc. (NYX); Cisco Systems, Inc. (CSCO); Financial Select Sector SPDR (XLF); AT&T Inc. (T); Citigroup Inc. (C); Amazon.com Inc. (AMZN); Motorola Inc. (MOT); Research in Motion Ltd. (RIMM); Freeport-McMoRan Copper & Gold Inc. (FCX); ConocoPhillips (COP); and Bristol-Myers Squibb Co. (BMY). These thirty-five options classes are among the most actively-traded, multiply-listed options classes.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080).

[6] The following options will be traded on The NASDAQ Options Market beginning March 31, 2008: QQQQ and AMAT. See Options Trader Alert #2008–4 at *http://www.nasdaqtrader.com/TraderNews.aspx?id=OTA2008–004.*

The next phase of the Penny Pilot Program is scheduled to commence on March 28, 2008, with the addition of the following 28 options classes: Goldman Sachs Group, Inc. (GS); Countrywide Financial Corporation (CFC); Bank of America Corporation (BAC); iShares MSCI Emerging Mkts. Index Fund (EEM); Merrill Lynch & Co., Inc. (MER); Vale (RIO); EMC Corporation (EMC); Exxon Mobil Corporation (XOM); Wal-Mart Stores, Inc. (WMT); The Home Depot, Inc. (HD); Valero Energy Corporation (VLO); Alcoa Inc. (AA); Dell Inc. (DELL); SanDisk Corporation (SNDK); The Bear Stearns Companies, Inc. (BSC); Pfizer Inc. (PFE); eBay Inc. (EBAY); Halliburton Company (HAL); Lehman Brothers Holdings Inc. (LEH); JPMorgan Chase & Co. (JPM); Washington Mutual, Inc. (WM); Ford Motor Company (F); Target Corporation (TGT); American International Group, Inc. (AIG); Newmont Mining Corporation (NEM); Verizon Communications Inc. (VZ); Mini-NDX Index Options (MNX); and Starbucks Corporation (SBUX).

The minimum price variation for all classes included in the Penny Pilot Program, except for the QQQQs, will be $0.01 for all quotations in option series that are quoted at less than $3 per contract and $0.05 for all quotations in option series that are quoted at $3 per contract or greater. The QQQQs will be quoted in $0.01 increments for all options series.

During the extended and expanded Pilot Program, Nasdaq commits to deliver two reports to the Commission. Each report will analyze the impact of penny pricing on market quality and options system capacity. The first report will analyze the results from March 31, 2008 through July 31, 2008, and the second report will examine the results from August 1, 2008 through January 31, 2009. These reports will be provided to the Commission within thirty days of the conclusion of the reporting period.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange.

Analysis of the current Penny Pilot Program has shown that the reduction in the minimum quoting increment has resulted in narrowing the average quoted spreads in all classes in the Pilot. A reduction in quoted spreads means that customers and other market participants may be able to trade options at better prices. Nasdaq's participation in the Penny Pilot Program as proposed by Nasdaq will allow further analysis of the impact of penny quoting in the Pilot classes over a longer period of time on, among other things: (1) Spreads; (2) peak quote rates; (3) quote message traffic; (4) displayed size; (5) ''depth of book'' liquidity; and (6) market structure. Nasdaq's unique options market structure will add to the analysis delivered by the existing options markets to date.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder,[10] because the foregoing proposed rule does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[11] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[12] Nasdaq has requested that the Commission waive the 30-day operative delay. Nasdaq has represented that it has carefully planned a detailed and thorough testing and roll-out schedule for the NOM market, and has coordinated that schedule with numerous industry participants. Waiving the 30-day operative delay will allow Nasdaq to participate in the ongoing industry-wide Penny Pilot Program upon commencement of trading on the Nasdaq Options Market on March 31, 2008. Furthermore, the proposed rule change is substantially similar to the Pilot programs of the other six options exchanges, which were approved by the Commission after notice and comment, and does not present any novel regulatory issues.[13] For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposal to be operative upon filing with the Commission.[14]

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.[15]

**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:

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq has satisfied the five-day pre-filing requirement.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See, e.g.*, Securities Exchange Act Release No. 56568 (September 27, 2007), 72 FR 56422 (October 3, 2007) (SR–NYSEArca–2007–88).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] *See* 15 U.S.C. 78s(b)(3)(C).

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2008–026 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–NASDAQ–2008–026. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2008–026 and should be submitted on or before April 25, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–6960 Filed 4–3–08; 8:45 am]

**BILLING CODE 8011–01–P**

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57583; File No. SR–Phlx–2008–23]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment No. 1 Thereto To Amend the Quarterly Options Series Pilot Program To Permit the Listing of Additional Series

March 31, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 27, 2008, the Philadelphia Stock Exchange, Inc. (''Exchange'' or ''Phlx'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On March 28, 2008, the Exchange submitted Amendment No. 1 to the proposed rule change. The Exchange has designated this proposal as non-controversial under section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 1012, Series of Options Open for Trading, to expand the number of series of exchange traded fund (''ETF'') options that may be listed pursuant to Phlx's Quarterly Option Series (''QOS'') pilot program (the ''Pilot Program'') [5] and to establish a delisting program in connection with the Pilot Program.[6]

The text of the proposed rule change is available on the Exchange's Web site (*http://www.phlx.com*), at the Exchange's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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

The purpose of the proposed rule change is to amend the Exchange's Rule 1012, Series of Options Open for Trading, to permit the Exchange to list strike prices for QOS in ETF options that fall within a percentage range (30%) above and below the price of the underlying ETF. The proposed rule change will allow the Exchange, upon demonstrated customer interest, to open additional strike prices of QOS in ETF options that are more than 30% above or below the current price of the underlying ETF. The proposal will permit the Exchange to list up to sixty (60) additional series per expiration month for each QOS in ETF options. Additionally, the proposal will establish a delisting program for delisting QOS within certain parameters.

The Pilot Program in Phlx Rule 1012 allows the Exchange to list and trade QOS on ETFs that satisfy the applicable listing criteria under Phlx rules.[7] Under the Pilot Program, the Exchange may list QOS in up to five currently listed option classes that are either options on ETFs or indexes. The Exchange is also permitted to list QOS in any options class that is selected by the other pilot program exchanges. QOS trade based on calendar quarters that end in March, June, September and December. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Phlx's Pilot Program was established in 2007 and subsequently extended through July 10, 2008. *See* Securities Exchange Act Release Nos. 55301 (February 15, 2007), 72 FR 8238 (February 23, 2007) (SR–Phlx–2007–08) (''Pilot Program Release'') and 56030 (July 9, 2007), 72 FR 38645 (July 13, 2007) (SR–Phlx–2007–42). The American Stock Exchange, the Chicago Board Options Exchange (''CBOE''), the International Stock Exchange, and NYSEArca (the ''pilot program exchanges'') have similar pilot programs that likewise continue through July 10, 2008.

[6] The Phlx proposal is substantially identical to a proposal by CBOE. *See* Securities Exchange Act Release No. 57410 (March 3, 2008), 73 FR 12483 (March 7, 2008) (SR–CBOE–2007–96). *See also* Securities Exchange Act Release No. 57425 (March 4, 2008), 73 FR 12783 (March 10, 2008) (SR–ISE–2008–19) (notice of filing and immediate effectiveness of a similar proposed rule change by the International Securities Exchange).

[7] Phlx Rule 1101A establishes the Pilot Program for index options.

Exchange lists QOS that expire at the end of the next consecutive four calendar quarters, as well as the fourth quarter of the next calendar year. For example, if the Exchange were trading QOS in iShares Russell 2000 Index Fund (''IWM'') in the month of April 2008, it would list series that expire at the end of the second quarter 2008 (June), third quarter 2008 (September), fourth quarter 2008 (December), first quarter 2009 (March), and fourth quarter 2009 (December).

Phlx now lists QOS in five ETF options: (1) Nasdaq-100 Index Tracking Stock (''QQQQ''); (2) IWM; (3) DIAMONDS Trust, Series 1 (''DIA''); (4) Standard and Poor's Depositary Receipts/SPDRs (''SPY''); and (5) Energy Select SPDR (''XLE'').[8] The average trading volume and total volume for QOS in IWM options, QQQQ options, and SPY options exceed the volume for QOS in the other ETF options (DIA and XLE) that are listed and traded on the Exchange. The chart below provides trading volume figures for the fourth quarter in 2007, demonstrating that, in all but the month of November, QOS in IWM, along with QOS in QQQQ and SPY, were some of the more popular and heavily traded QOS on the Exchange.

| QOS | October 2007 | | November 2007 | | December 2007 | |
|---|---|---|---|---|---|---|
| | ADV | Total Vol | ADV | Total Vol | ADV | Total Vol |
| IWM | 2,090 | 48,066 | 3,998 | 83,952 | 9,325 | 177,172 |
| QQQQ | 3,900 | 89,692 | 8,043 | 168,904 | 15,859 | 301,320 |
| SPY | 3,919 | 90,134 | 4,697 | 98,646 | 5,064 | 96,210 |
| DIA | 412 | 9,478 | 669 | 14,042 | 1,816 | 34,496 |
| XLE | 653 | 15,008 | 8,967 | 188,316 | 3,357 | 63,776 |

Over time, some of the pilot program exchanges have received requests from market participants to add additional strike prices for QOS in IWM options that would be outside of the price range for setting strikes as provided for under Rule 5.5(e)(3) (hereinafter ''+/−$5 range'').[9] Moreover, investors and other market participants have advised such exchanges that they are buying and selling QOS in IWM options to trade volatility. In order to adequately replicate the desired volatility exposure, these market participants need to trade several IWM option series, many having strike prices that fall outside of the +/−$5 range currently allowed under the QOS rules.

Market participants have also advised pilot program exchanges that their investment strategies involve trading options tied to a particular option ''delta,''[10] rather than a particular level of the underlying security or index. At issue is the fact that delta depends on both the relative difference between the level of the underlying security or index and the option strike price and time to expiration. For example, with IWM trading at $85 per share, the strike price corresponding to a ''25-delta'' IWM call (*i.e.*, a call option with a delta of 25) with one month to expiration would be 89. However, the strike price corresponding to a ''25-delta'' IWM call with 3 months to expiration would be 93, and the strike price of a ''25-delta'' call with 1 year to expiration would be 106. In short, the +/−$5 range for QOS in IWM options is insufficient to satisfy customer demand.

In order to meet such customer demand, the Exchange proposes to amend Commentary .08 to Phlx Rule 1012, which governs the Quarterly Option Series Pilot Program. Specifically, the Exchange proposes to revise Commentary .08 to allow the Exchange to open additional strike prices of QOS in ETF options that are within thirty percent (30%) above or below the closing price of the underlying on the preceding business day. The Exchange also will be permitted to open additional strike prices of QOS in ETF options that are more than 30% above or below the current price of the underlying ETF, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market-Makers trading for their own account will not be considered when determining customer interest under this proposed provision. The Exchange will be permitted to list up to sixty (60) additional series per expiration month for each QOS in ETF options.

The Exchange also is proposing to add new paragraph (g) to Commentary .08 to Phlx Rule 1012, which will set forth a delisting policy. Specifically, with respect to QOS in ETF options, the Exchange will, on a monthly basis, review series that are outside a range of five strikes above and five strikes below the current price of the underlying ETF, and delist series with no open interest in both the put and the call series having a strike price that is: (i) Higher than the highest strike price with open interest in the put and/or call series for a given expiration month; or (ii) lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

To illustrate how the proposed delisting program will work, assume that IWM closed at $70 on the day the Exchange conducts the monthly review of QOS in ETF options. Series having strike prices above $75 and below $65 would be reviewed by the Exchange for possible delisting. Assume that the Exchange lists the following QOS in IWM options that expire in June 2008:

| Calls—June 08 Exp | | Puts—June 08 Exp | |
|---|---|---|---|
| Strike | Open Interest? | Strike | Open Interest? |
| 62 | No | 62 | No |
| 63 | No | 63 | Yes |
| 64 | Yes | 64 | Yes |
| * | * | * | * |
| 76 | Yes | 76 | Yes |
| 77 | Yes | 77 | Yes |
| 78 | Yes | 78 | Yes |
| 79 | Yes | 79 | Yes |
| 80 | Yes | 80 | Yes |
| 81 | Yes | 81 | Yes |
| 82 | Yes | 82 | Yes |
| 83 | No | 83 | No |
| 84 | No | 84 | No |
| 85 | No | 85 | Yes |
| 86 | Yes | 86 | No |
| 87 | Yes | 87 | Yes |
| 88 | Yes | 88 | Yes |
| 89 | Yes | 89 | No |
| 90 | Yes | 90 | No |
| 91 | No | 91 | No |
| 92 | No | 92 | No |
| 93 | No | 93 | No |

[8] These are the same options that are listed by the other pilot program exchanges.

[9] Commentary .08(d) to Phlx Rule 1012 provides that the Exchange shall list strike prices for a QOS that are within $5 from the closing price of the underlying on the preceding day.

[10] ''Delta'' is a measure of how an option price will change in response to a $1 price change in the underlying security or index. For example, an ABC option with a delta of ''50'' can be expected to change by $0.50 in response to a $1 change in the price of ABC.

The Exchange would delist the first series listed above, as well as the last three: $62, $91, $92, and $93. The Exchange would not delist the $83 and $84 series because there are series having open interest with strike prices higher than these two series. In addition, the Exchange would not delist the $63 call series because there is open interest in the $63 put series.

Notwithstanding the proposed delisting policy, customer requests to add strikes and/or maintain strikes in QOS in ETF options in series eligible for delisting shall be granted.

Further, in connection with the proposed delisting policy, if the Exchange identifies series for delisting, the Exchange shall notify other options exchanges with similar delisting policies regarding eligible series for listing, and shall work with such other exchanges to develop a uniform list of series to be delisted, so as to ensure uniform series delisting of multiply listed QOS in ETF options. The Exchange expects that the proposed delisting policy for QOS in ETF options would be adopted by other options exchanges that have adopted the QOS Pilot Program.

The Exchange represents that it has the necessary systems capacity to support new options series that will result from this proposal. Further, as proposed, the Exchange notes that this rule change would become part of the Pilot Program and, going forward, would be considered by the Commission when the Exchange seeks to renew or make permanent the Pilot Program in the future.[11]

2. Statutory Basis

The Exchange believes that because the additional new series can be added without presenting capacity problems and because the Exchange has proposed a delisting policy with respect to QOS in ETF options, the rule proposal is consistent with section 6(b) of the Act[12] in general, and furthers the objectives of section 6(b)(5) of the Act[13] 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 to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15] The Exchange has asked the Commission to waive the 30-day operative delay to permit the Exchange to immediately compete with the other options exchanges that have similarly amended their quarterly options series pilot programs.

The Commission notes that this proposal is substantially similar to a proposed rule change submitted by CBOE, which was approved by the Commission following publication for notice and comment, and does not raise any new regulatory issues.[16] Waiving the 30-day operative delay will promote, without undue delay, further competition in the options market.[17] For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

The Commission notes that this rule change will become part of the Pilot Program and, going forward, its effects will be considered by the Commission in the event that the Exchange seeks to renew or make permanent the Pilot Program.[18] Thus, in the Exchange's future reports on the Pilot Program, the Exchange should include analysis of (1) the impact of the additional series on the Exchange's market and quote capacity, and (2) the implementation and effects of the delisting policy, including the number of series eligible for delisting during the period covered by the report, the number of series actually delisted during that period (pursuant to the delisting policy or otherwise), and documentation of any customer requests to maintain QOS strikes that were otherwise eligible for delisting.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that 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.[19]

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[11] To the extent the Commission views the proposed rule change as an expansion of the Pilot Program, thus triggering the requirement under the terms of the Pilot Program Approval Order that the Exchange submit a Pilot Program report, the Exchange notes that it submitted a report on or about June 26, 2007, in connection with its filing to extend the Pilot Program through July 10, 2008. *See* Securities Exchange Act Release No. 56030 (July 9, 2007), 72 FR 38645 (July 13, 2007) (SR–Phlx–2007–42).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[16] *See* Securities Exchange Act Release No. 57410, supra note 6. *See also* Securities Exchange Act Release No. 57425, *supra* note 6.

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] As set forth in the Pilot Program Release, if the Exchange were to propose an extension, expansion, or permanent approval of the Pilot Program, the Exchange must submit, along with any filing proposing such amendments to the program, a report that provides an analysis of the Pilot Program covering the entire period during which the Pilot Program was in effect. *See* Pilot Program Release, *supra* note 5. The Pilot Program Release requires the Exchange to include in its report, at a minimum: (1) Data and written analysis on the open interest and trading volume in the classes for which QOS were opened; (2) an assessment of the appropriateness of the option classes selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of the Exchange, OPRA, and market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the Pilot Program and how the Exchange addressed such problems; (5) any complaints that the Exchange received during the operation of the Pilot Program and how the Exchange addressed them; and (6) any additional information that would assist in assessing the operation of the Pilot Program.

[19] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, the Commission considers the period to commence on March 28, 2007, the date on which the Exchange filed Amendment No. 1.

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–Phlx–2008–23 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–Phlx–2008–23. 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 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–Phlx–2008–23 and should be submitted on or before April 25, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–6961 Filed 4–3–08; 8:45 am]

**BILLING CODE 8011–01–P**

[20] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57578; File No. SR–Amex–2008–34]**

## Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Give Retroactive Effect to Its Revenue Sharing Program for ETF Quoting Participants

March 28, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 27, 2008, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to retroactively apply a previously-adopted revenue sharing program (''RSP'') for Designated Amex Remote Traders (''DARTs''), ETF specialists, and registered traders (collectively, ''ETF quoting participants'') on the Exchange. The text of the proposed rule change is available at Amex's principal office, the Commission's Public Reference Room, and *http://www.amex.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, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to retroactively apply its previously-adopted RSP for ETF quoting participants on the Exchange, as described below. The RSP was first put in place by the Exchange for ETF specialists and registered traders, effective July 1, 2007, and was to last through December 31, 2007 unless otherwise extended.[3] The Exchange then inadvertently failed to file to extend the RSP at the expiration of that time period, but, upon realizing the error (when recently expanding the RSP to DARTs), promptly filed to reinstate the RSP for all ETF quoting participants, effective March 18, 2008.[4] The RSP is now in effect through the end of September 2008.

The purpose of the instant filing is to seek approval to retroactively apply the now-reinstated RSP for the time period January 1, 2008 through March 17, 2008 in order to effectively assure continuity of the RSP from its inception for all ETF quoting participants on the Exchange, who have continued to quote aggressively in the expectation of receiving RSP payments flowing therefrom. To date, the Exchange believes that the current RSP has been beneficial in creating incentives for ETF quoting participants and does not believe it fair to withhold RSP payments for the retroactive period from ETF quoting participants solely because of the Exchange's inadvertent error. Retroactive application of the RSP will satisfy all ETF quoting participants' expectations.

For the retroactive period, the RSP will operate under the same terms established in the RSP Release.[5] Specifically:

- RSP payments will be made from the Exchange's general revenues and not be limited to a particular revenue source.
- ETF specialists may receive an aggregate RSP payment (calculated monthly) of as much as $0.0024 per share (or 24 cents per 100 shares) whenever the specialist either buys or

[3] 3 *See* Securities Exchange Act Release No. 55893 (June 29, 2007), 72 FR 37059 (July 6, 2007) (SR–Amex–2007–68) (''RSP Release'').

[4] *See* Securities Exchange Act Release No. 57541 (March 20, 2008) (SR–Amex–2008–25), 73 FR 16400 (March 27, 2008) (reinstating RSP for all ETF quoting participants); *see also* Securities Exchange Act Release No. 57540 (March 20, 2008), 73 FR 16399 (March 27, 2008) (SR–Amex–2008–23) (expanding RSP to DARTs).

[5] *See supra* note 3.

sells his specialty ETF on the Exchange and is a provider of liquidity in that transaction (*e.g.*, the specialist's quote is traded against or the specialist offsets an order imbalance as part of an opening or closing transaction). The RSP payment is comprised of $0.0004 per share (or 4 cents per 100 shares) for all shares executed on the Exchange in their specialty ETF (irrespective of whether the specialist is the provider of liquidity), plus another $0.0020 (or 20 cents per 100 shares) if the specialist is the provider of liquidity in the transaction. If the specialist is not the liquidity provider, then the RSP payment is limited to $0.0004 per share executed on the Exchange in its specialty ETF.

- Registered traders in ETFs will receive an RSP payment of $0.0010 per share (or 10 cents per 100 shares) whenever the registered trader either buys or sells an ETF on the Exchange and is a provider of liquidity in that transaction.[6]
- No ETF quoting participant will receive an RSP payment when another ETF quoting participant is a contra-party to the same transaction.
- RSP payments will be made on transactions in securities trading at less than $1 only in amounts proportionate to the amount on which the Exchange collects revenue.
- Customer transaction charges are capped at $100 per transaction, meaning that the transaction charge of $0.0023 per share is assessed only on the first 43,478 shares executed, and an ETF quoting participant would receive an RSP payment based only on the first 43,478 shares executed.

2. Statutory Basis

Amex believes the proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(4) of the Act[8] in particular, in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the Exchange proposes to retroactively apply the RSP to assure continuity of the program from its inception and to assure fairness for the ETF quoting participants.

[6] The RSP for DARTs, although described in SR–Amex–2008–23 and SR–Amex–2008–25 (*see supra* note 4), does not require any retroactive application because DARTs did not actually begin trading on the Exchange until after the effective date of Amex's filing reinstating the RSP.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

*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**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2008–34 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–2008–34. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2008–34 and should be submitted on or before April 25, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Florence E. Harmon,**

*Deputy Secretary.*

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[9] 17 CFR 200.30–3(a)(12)

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57581; File No. SR–Amex–2008–31]**

## Self-Regulatory Organizations; American Stock Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Quarterly Options Series Pilot Program To Permit the Listing of Additional Series

March 31, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 25, 2008, the American Stock Exchange, LLC (''Exchange'' or ''Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change 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 amend Amex Rule 903, Commentary .09 (Quarterly Options Series Pilot Program) to permit the Exchange to list strike prices for Quarterly Options Series (''QOS'') in exchange traded fund (''ETF'') options that fall within a percentage range (30%) above and below the price of the underlying ETF. Additionally, upon demonstrated customer interest, the Exchange also will be permitted to open additional strike prices of QOS in ETF options that are more than 30% above or below the current price of the ETF. Specialists and registered options traders (''ROTs'') trading for their own account will not be considered when determining customer interest under this provision. In addition to the initial listed series, the Exchange may list up to sixty (60) additional series per expiration month for each QOS in ETF options. Further, the proposal includes a delisting program to be undertaken by the Exchange in connection with QOS in ETF options.

The text of the proposed rule change is available on the Exchange's Web site (*http://www.amex.com*), at the Exchange's principal office, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, 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

The purpose of this proposal is to amend Amex Rule 903, Commentary .09 (Quarterly Options Series Pilot Program) to allow the Exchange to open additional strike prices of QOS in ETF options that are within thirty percent (30%) above or below the closing price of the underlying ETF on the preceding business day. Additionally, upon demonstrated customer interest, the Exchange also will be permitted to open additional strike prices of QOS in ETF options that are more than 30% above or below the current price of the underlying ETF. Specialists and ROTs trading for their own account will not be considered when determining customer interest under this provision. In addition, the Exchange will be permitted to list up to sixty (60) additional series per expiration month for each QOS in ETF options.

On July 11, 2006, the Exchange filed with the Commission a pilot program proposal to permit the listing and trading of QOS in options on indexes or options on ETFs that satisfy the applicable listing criteria under Amex rules.[5] QOS trade based on calendar quarters that end in March, June, September and December. The Exchange lists QOS that expire at the end of the next consecutive four calendar quarters, as well as the fourth quarter of the next calendar year. For example, if the Exchange were trading QOS in the iShares Russell 2000 Index Fund (''IWM'') in the month of April 2008, it would list series at the end of the second quarter 2008 (June), third quarter 2008 (September), fourth quarter 2008 (December) and first quarter 2009 (March) and fourth quarter 2009 (December).

Currently, the Exchange lists QOS in five ETF options: (1) Nasdaq–100 Index Tracking Stock (''QQQQ''); (2) IWM; (3) DIAMONDS Trust, Series 1 (''DIA''); (4) Standard & Poor's Depository Receipts (''SPY''); and (5) Energy Select SPDR (''XLE''). The average trading volume and total volume for QOS in IWM options, QQQQ options, and SPY options exceed the volumes for QOS in the other ETF options (DIA and XLE) that are listed and traded on the Exchange. The chart below provides trading volume figures for the fourth quarter in 2007, demonstrating that, depending on the particular month, QOS in IWM, QQQQ, or SPY options are the most popular and heavily traded QOS on the Exchange.

| QOS | October 2007 | | November 2007 | | December 2007 | |
|---|---|---|---|---|---|---|
| | ADV | Total Vol | ADV | Total Vol | ADV | Total Vol |
| IWM | 715 | 16,443 | 9,435 | 198,143 | 6,306 | 126,119 |
| QQQQ | 1,004 | 23,103 | 4,655 | 97,763 | 11,303 | 226,068 |
| SPY | 2,793 | 64,234 | 4,509 | 94,688 | 4,046 | 80,911 |
| DIA | 3 | 63 | 38 | 792 | 72 | 1,435 |
| XLE | 60 | 1,390 | 1,721 | 36,143 | 843 | 16,866 |

Over time, the Exchange has continually received requests from market participants to add additional strike prices for QOS in IWM, QQQQ, and SPY options that would be outside of the price range for setting strikes as provided under Commentary .09 to Rule 903 (hereinafter the ''+/−$5 range'').[6] Investors and other market participants have advised the Exchange that they are buying and selling QOS in IWM, QQQQ, and SPY options to trade volatility. In order to adequately replicate the desired volatility exposure, these market participants need to trade several options series in IWM, QQQQ, and SPY, many having strike prices that fall outside of the +/−$5 range currently allowed under the QOS rules.

In addition, other participants have advised the Exchange that their

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 54137 (July 12, 2006), 71 FR 41283 (July 20, 2006) (SR–Amex–2006–67) (''Pilot Program Release''). Under the Pilot Program, the Exchange is permitted to list QOS in up to five currently listed option classes that are either options on ETFs or indexes. The Exchange is also permitted to list QOS in any options class that is selected by other securities exchanges that employ a similar Pilot Program under their respective rules.

[6] Commentary .09(c) to Rule 903 provides that the Exchange shall list strike prices for a QOS that are within $5 from the closing price of the underlying on the preceding day.

investment strategies involve trading options tied to a particular option ''delta,''[7] rather than a particular level of the underlying security or index. At issue is the fact that delta depends on both the relative difference between the level of the underlying security or index and the option strike price and time to expiration. For example, with IWM trading at $85 per share, the strike price corresponding to a ''25-delta'' IWM call (*i.e.*, a call option with a delta of 25) with one month to expiration would be 89. However, the strike price corresponding to a ''25-delta'' IWM call with 3 months to expiration would be 93, and the strike price of a ''25-delta'' IWM call with 1 year to expiration would be 106. In short, the Exchange has been advised that the +/−$5 range for QOS in IWM, QQQQ, and SPY options is insufficient to satisfy customer demand.

In order to meet customer demand, the Exchange proposes to amend Commentary .09 to Rule 903, which governs the Quarterly Options Series Pilot Program. Specifically, the Exchange proposes to revise Commentary .09 to Rule 903 to allow the Exchange to open additional strike prices of QOS in ETF options that are within thirty percent (30%) above or below the closing price of the underlying ETF Shares (as defined in Rule 900(b)(42)) on the preceding business day. The Exchange also will be permitted to open additional strike prices of QOS in ETF options that are more than 30% above or below the current price of the underlying ETF, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Specialists and ROTs trading for their own account will not be considered when determining customer interest under this proposed provision. The Exchange will be permitted to list up to sixty (60) additional series per expiration month for each QOS in ETF options.

The Exchange also is proposing to add new paragraph (e) to Commentary .09 to Rule 903, which will set forth a delisting policy. Specifically, with respect to QOS in ETF options, the Exchange will, on a monthly basis, review series that are outside a range of five strikes above and five strikes below the current price of the underlying ETF, and de-list series with no open interest in both the put and the call series having: (1) A strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; or (2) a strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month. To illustrate how the proposed delisting program will work, assume that IWM closed at $70 on the day the Exchange conducts the monthly review of QOS in ETF options. Series having strike prices above $75 and below $65 would be reviewed by the Exchange for possible delisting. Assume that the Exchange lists the following QOS in IWM options that expire in June 2008:

| Calls—June 08 Exp | | Puts—June 08 Exp | |
|---|---|---|---|
| Strike | Open interest? | Strike | Open interest? |
| 62 | No | 62 | No |
| 63 | No | 63 | Yes |
| 64 | Yes | 64 | Yes |
| * | * | * | * |
| 76 | Yes | 76 | Yes |
| 77 | Yes | 77 | Yes |
| 78 | Yes | 78 | Yes |
| 79 | Yes | 79 | Yes |
| 80 | Yes | 80 | Yes |
| 81 | Yes | 81 | Yes |
| 82 | Yes | 82 | Yes |
| 83 | No | 83 | No |
| 84 | No | 84 | No |
| 85 | No | 85 | Yes |
| 86 | Yes | 86 | No |
| 87 | Yes | 87 | Yes |
| 88 | Yes | 88 | Yes |
| 89 | Yes | 89 | No |
| 90 | Yes | 90 | No |
| 91 | No | 91 | No |
| 92 | No | 92 | No |
| 93 | No | 93 | No |

The Exchange would de-list the first series listed above, as well as the last three: $62, $91, $92, and $93. The Exchange would not, however, de-list the $83 and $84 series because there are series having open interest with strike prices higher than these two series. In addition, the Exchange would not de-list the $63 series because there is open interest in the put series. Notwithstanding the proposed delisting policy, customer requests to add strikes and/or maintain strikes in QOS in ETF options in series eligible for delisting shall be granted. Further, in connection with the proposed delisting policy, if the Exchange identifies series for delisting, the Exchange shall notify other options exchanges with similar delisting policies regarding eligible series for listing, and shall work with such other exchanges to develop a uniform list of series to be de-listed, so as to ensure uniform series delisting of multiply-listed QOS in ETF options. The Exchange expects that all options exchanges that have a QOS Pilot Program will adopt the proposed delisting policy.

The Exchange represents that it has the necessary systems capacity to support new options series that will result from this proposal. Further, as proposed, the Exchange notes that this rule change will become part of the pilot program and, going forward, will be considered by the Commission when the Exchange seeks to renew or make permanent the pilot program in the future.[8]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[9] of the Act in general and furthers the objectives of Section 6(b)(5)[10] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes that adoption of this proposal will promote competition among the options exchanges related to the quarterly options series pilot programs.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change will impose no 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 Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public

[7] ''Delta'' is a measure of how an option price will change in response to a $1 price change in the underlying security or index. For example, XYZ option with a delta of ''50'' can be expected to change by $0.50 in response to a $1 change in the price of XYZ.

[8] To the extent the Commission views the proposed rule change as an expansion of the pilot program, thus triggering the requirement under the terms of the Pilot Program Approval Order that the Exchange submit a pilot program report, the Exchange notes that it submitted a report on June 28, 2007, in connection with its filing to extend the pilot program through July 10, 2008. *See* Securities Exchange Act Release No. 56032 (July 9, 2007), 72 FR 38634 (July 13, 2007).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12] The Exchange has asked the Commission to waive the 30-day operative delay to permit the Exchange to immediately compete with the other options exchanges that have similarly amended their quarterly options series pilot programs.

The Commission notes that this proposal is substantially similar to a proposed rule change submitted by the Chicago Board Options Exchange, which was approved by the Commission following publication for notice and comment, and does not raise any new regulatory issues.[13] Waiving the 30-day operative delay will promote, without undue delay, further competition in the options market.[14] For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

The Commission notes that this rule change will become part of the pilot program and, going forward, its effects will be considered by the Commission in the event that the Exchange seeks to renew or make permanent the pilot program.[15] Thus, in the Exchange's future reports on the Pilot Program, the Exchange should include analysis of (1) the impact of the additional series on the Exchange's market and quote capacity, and (2) the implementation and effects of the delisting policy, including the number of series eligible for delisting during the period covered by the report, the number of series actually delisted during that period (pursuant to the delisting policy or otherwise), and documentation of any customer requests to maintain QOS strikes that were otherwise eligible for delisting.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that 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–Amex–2008–31 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–2008–31. 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 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–Amex–2008–31 and should be submitted on or before April 25, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–7027 Filed 4–3–08; 8:45 am]

**BILLING CODE 8011–01–P**

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[13] *See* Securities Exchange Act Release No. 57410 (March 3, 2008), 73 FR 12483 (March 7, 2008) (SR–CBOE–2007–96). *See also* Securities Exchange Act Release No. 57425 (March 4, 2008), 73 FR 12783 (March 10, 2008) (SR–ISE–2008–19).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] As set forth in the Pilot Program Release, if the Exchange were to propose an extension, expansion, or permanent approval of the Pilot Program, the Exchange must submit, along with any filing proposing such amendments to the program, a report that provides an analysis of the Pilot Program covering the entire period during which the Pilot Program was in effect. *See* Pilot Program Release, supra note 5. The Pilot Program Release requires the Exchange to include in its report, at a minimum: (1) Data and written analysis on the open interest and trading volume in the classes for which QOS were opened; (2) an assessment of the appropriateness of the option classes selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of the Exchange, OPRA, and market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the Pilot Program and how the Exchange addressed such problems; (5) any complaints that the Exchange received during the operation of the Pilot Program and how the Exchange addressed them; and (6) any additional information that would assist in assessing the operation of the Pilot Program.

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57582; File No. SR–CBOE–2008–34]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Class Quoting Limit in Certain Option Classes

March 31, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 26, 2008, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Exchange has designated this proposal as one

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to increase the class quoting limit in five option classes. The text of the proposed rule change is available on CBOE's Web site (*http://www.cboe.org/legal*), at the CBOE'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, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

CBOE Rule 8.3A, Maximum Number of Market Participants Quoting Electronically per Product, establishes class quoting limits (''CQLs'') for each class traded on the Hybrid Trading System or Hybrid 2.0 Platform.[5] A CQL is the maximum number of quoters that may quote electronically in a given product and Rule 8.3A, Interpretation .01(a) provides that the current levels are generally established at 50.

In addition, Rule 8.3A, Interpretation .01(b) provides a procedure by which the President of the Exchange may increase the CQL for an existing or new product.[6] In this regard, the President of the Exchange may increase the CQL in exceptional circumstances, which are defined in the rule as ''substantial trading volume, whether actual or expected.''[7] The effect of an increase in the CQL is procompetitive in that it increases the number of market participants that may quote electronically in a product. The purpose of this filing is to increase the CQL in the following option classes as described below:

- Bear Stearns (BSC) from its current limit of 50 to 60;
- Dryships, Inc. (DRYS) from its current limit of 50 to 65;
- Lehman Brothers (LEH) from its current limit of 50 to 60;
- Petro Bras SA (PBR) from its current limit of 50 to 60; and
- Visa, Inc. (V) from its current limit of 50 to 60.[8]

The trading volume in these classes recently has increased substantially or is expected to increase. In addition, increasing these CQLs to 60 (or 65 in the case of DRYS) will accommodate Market-Makers that are currently on the wait-list to be appointed to the option classes. Increasing the CQLs in these options will enable the Exchange to enhance the liquidity offered, thereby offering deeper and more liquid markets. Lastly, CBOE represents that it has the systems capacity to support this increase in the CQLs.

2. Statutory Basis

Accordingly, CBOE believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. As indicated above, the Exchange believes that increasing the CQL in these options will enable the Exchange to enhance the liquidity offered, thereby offering deeper and more liquid markets.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither received nor solicited written comments on the proposal.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change will take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(i) of the Act[11] and Rule 19b–4(f)(1) thereunder,[12] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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–CBOE–2008–34 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–CBOE–2008–34. This file

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Rule 8.3A.01.

[6] The Exchange has increased the CQLs above 50 for certain classes. For example, Apple Inc. (AAPL) is at 60, Research in Motion (RIMM) is at 60, and Goldman Sachs Group Inc. (GS) is at 60. *See* Securities Exchange Act Release Nos. 55664 (April 24, 2007), 72 FR 23867 (May 1, 2007) (SR–CBOE–2007–36) and 56772 (November 8, 2007), 72 FR 64261 (November 15, 2007) (SR–CBOE–2007–126).

[7] ''Any actions taken by the President of the Exchange pursuant to this paragraph will be submitted to the SEC in a rule filing pursuant to Section 19(b)(3)(A) of the Exchange Act.'' Rule 8.3A.01(b).

[8] Options on Visa, Inc. (V) will be listed on the Exchange beginning approximately March 28, 2008.

[9] 15 U.S.C. 78(f)(b).

[10] 15 U.S.C. 78(f)(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(i).

[12] 17 CFR 240.19b–4(f)(1).

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2008–34 and should be submitted on or before April 25, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–7028 Filed 4–3–08; 8:45 am]

**BILLING CODE 8011–01–P**

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–57587; File No. SR–CHX–2007–21]**

## Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rules Relating to Registration Requirements

March 31, 2008.

### I. Introduction

On October 9, 2007, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend rules relating to registration requirements. On February 14, 2008, CHX filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on February 28, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

### II. Description of the Proposal

The Financial Industry Regulatory Authority, Inc.'s (''FINRA'') Web Central Registration Depository (''Web CRD'') system is a centralized, web-based system used by securities exchanges and broker-dealers across the country to track registration and qualification information about firms and the individuals who work for those firms. CHX entered into an agreement with FINRA to allow the Exchange's participants to use Web CRD to register certain of its associated persons. Therefore, the Exchange proposes to amend its registration rules relating to registration requirements and to adopt related fees and to delete an outdated provision in its rules.

First, the Exchange proposes to require Exchange participants to use Web CRD to register their associated persons who are required to register with the Exchange under CHX rules.[4] Similarly, the Exchange also seeks to require participants to submit a Form U–5 to the Web CRD following the termination of the associated person.[5]

Second, the Exchange proposes that it be allowed to direct its participants to submit fingerprint cards to the Exchange or to FINRA for processing during the registration process.[6] Current CHX rules require participants to submit fingerprints to the Exchange. The Exchange seeks flexibility so that it could determine, from time to time, which fingerprint processing method would be most efficient for the Exchange and for its participants.

Because FINRA would assess charges to CHX participants for using the Web CRD system and for processing any fingerprints that are submitted, the Exchange also is amending its Fee Schedule to include applicable registration, processing and termination fees, as well as various fingerprint charges.[7]

Finally, CHX proposes to delete Interpretation and Policy .03 of Article 6, Rule 2 that requires firms to notify CHX of the termination of any non-registered, associated person's employment. CHX believes that this requirement has become somewhat obsolete with the elimination of its physical trading floor because the requirement had been largely focused on the employment status of clerks working on the Exchange's trading floor.[8]

### III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that Exchange's proposal to require its participant firms to use Web CRD system to register certain associated persons and to submit a Form U–5 following the termination of the associated person would eliminate the need for manual processing currently performed by Exchange staff. Significantly, it would also allow for the

[1] 15 U.S.C. 78s(b)(l)

[2] 17 CFR 240.19B–4.

[3] *See* Securities Exchange Act Release No. 57363 (February 20, 2008), 73 FR 10846 (February 28, 2008).

[4] *See* proposed Article 6, Rule 2, Interpretation and Policy .01.

[5] *See* proposed Article 6, Rule 2, Interpretation and Policy .02.

The Exchange plans to allow its participants to transition to the use of the Web CRD system over the course of a six to nine-month period. At the end of this period, CHX participants would be required to use Web CRD for submitting any registration materials required by CHX rules.

[6] *See* proposed Article 6, Rule 10, Interpretation and Policy .01.

[7] 7 These charges include an $85 registration fee; a $95 disclosure processing fee; a $30 annual processing fee; and termination fees of $40 and $80. Fingerprint processing fees would be $30.25 per card for an initial submission; $13 per card for a second submission; and $30.25 per card for a third submission. These fees reflect the charges assessed by FINRA for these services; CHX would not be charging any additional fees of its own.

[8] Moreover, CHX regularly receives an updated list of a firm's associated persons when it conducts its annual examinations.

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

compilation of information related to the registration of associated persons in one central repository for access by regulators and broker-dealers, and could allow the Exchange's regulatory group, as well as the firms themselves, to better determine whether a registrant has met applicable continuing education requirements. The Commission believes this should increase regulatory efficiency and capabilities without imposing an undue burden on participants.

The Commission also believes that it is reasonable to provide the Exchange with the flexibility to determine whether it, or FINRA, would be best suited to process fingerprint cards, while participants would continue to have the obligation to submit fingerprints.

Furthermore, the Commission believes that it is appropriate for the Exchange to amend its Fee Schedule to reflect fees that FINRA would charge for services rendered in connection with the use of Web CRD and the fingerprinting services set forth in the proposal. The Commission notes that CHX would not be charging any additional fees of its own.

Finally, the Commission agrees that it is appropriate for CHX to delete Interpretation and Policy .03 of Article 6, Rule 2 relating to the firms' requirement to notify the Exchange of the termination of any non-registered, associated person's employment, since it has become obsolete given CHX's new trading model and since CHX regularly receives an updated list of a firm's associated persons when it conducts its annual examinations.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CHX–2007–21), as amended, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8–7029 Filed 4–3–08; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11206 and #11207]**

### Arkansas Disaster #AR–00018

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1751–DR ), dated 03/28/2008.

*Incident:* Severe Storms, Tornadoes, and Flooding.

*Incident Period:* 03/18/2008 and continuing.

*Effective Date:* 03/28/2008.

*Physical Loan Application Deadline Date:* 05/27/2008.

*Economic Injury (EIDL) Loan Application Deadline Date:* 12/29/2008.

**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 President's major disaster declaration on 03/28/2008, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Baxter, Jackson, Madison, Stone, Benton, Lawrence, Marion, Woodruff, Independence, Logan, Randolph.

Contiguous Counties (Economic Injury Loans Only):

Arkansas: Boone, Cleburne, Cross, Greene, Monroe, Pope, Searcy, St. Francis, White, Carroll, Craighead, Franklin, Izard, Newton, Prairie, Sebastian, Van Buren, Yell, Clay, Crawford, Fulton, Johnson, Poinsett, Scott, Sharp, Washington.

Missouri: Barry, Ozark, McDonald, Ripley, Oregon, Taney.

Oklahoma: Adair, Delaware.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners with credit available elsewhere: | 5.500 |
| Homeowners without credit available elsewhere: | 2.750 |
| Businesses with credit available elsewhere: | 8.000 |
| Other (including non-profit organizations) with credit available elsewhere: | 5.250 |
| Businesses and non-profit organizations without credit available elsewhere: | 4.000 |
| *For Economic Injury:* | |
| Businesses & small agricultural cooperatives without credit available elsewhere: | 4.000 |

The number assigned to this disaster for physical damage is 112066 and for economic injury is 112070.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E8–6992 Filed 4–3–08; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11205]**

### Iowa Disaster #IA–00014 Declaration of Economic Injury

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Iowa, dated 03/31/2008.

*Incident:* Structural Fire.

*Incident Period:* 01/19/2008.

*Effective Date:* 03/31/2008.

*EIDL Loan Application Deadline Date:* 12/31/2008.

**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: Jackson.

Contiguous Counties:

Iowa: Clinton, Dubuque, Jones.

Illinois: Carroll, Jo Daviess.

The Interest Rate is: 4.000.

The number assigned to this disaster for economic injury is 112050.

The States which received an EIDL Declaration # are Iowa and Illinois.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: March 31, 2008.

**Steven C. Preston,**

*Administrator.*

[FR Doc. E8–7002 Filed 4–3–08; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Liquidation and Debt Collection Activities; Fees for Liquidation Activities Performed by Authorized CDC Liquidators

**AGENCY:** U.S. Small Business Administration (SBA).

**ACTION:** Notice of Compensation Fees Percentages.

**SUMMARY:** SBA is setting the compensation fees for Authorized CDC Liquidators (''ACLs'') for their liquidation activities on 504 loans that have been completed as of the date of this notice, and for ongoing liquidation activities being pursued according to an approved liquidation plan, at 10% of the net recovery proceeds realized from the sale of collateral or other liquidation actions on an individual loan up to $25,000 for each such loan and 5% of the realized net recovery proceeds above such amounts. SBA is also setting compensation fees for liquidations by ACLs of 504 loans where the debenture was purchased during the period after May 14, 2007, through the date of this notice, and for which a liquidation plan has not yet been approved by SBA, at 4% of the net recovery proceeds realized from the sale of collateral or other liquidation action on an individual loan up to $25,000 for each such loan and 2% of the realized net recovery proceeds above such amounts.

**DATES:** These compensation fee percentages are effective as of April 4, 2008.

**FOR FURTHER INFORMATION CONTACT:** Walter Intlekofer, Chief, Portfolio Management Division, (202) 205–7543, *walter.intlekofer@sba.gov.*

**SUPPLEMENTARY INFORMATION:** On April 12, 2007, SBA published in the **Federal Register** at 72 FR 18349, a final rule amending the regulations pertaining to guaranteed loan and debenture liquidation and litigation cases for the Certified Development Company Program and the 7(a) Guaranteed Loan Program. This final rule had an effective date of May 14, 2007. In Section 120.542(c) of the amended regulations, SBA published the formula for determining the compensation fee that SBA would pay to Authorized CDC Liquidators for their liquidation actions on 504 loans. SBA stated that the compensation fee was to be a percentage (to be published in the **Federal Register** from time to time, but not to exceed 10%) of the net recovery proceeds realized from the sale of collateral or other liquidation activities, on an individual loan, up to a fee of $25,000 for such loan, and a lower percentage (also to be published in the **Federal Register** from time to time, but not to exceed 5%) of the realized net recovery proceeds above such amounts.

SBA recognizes that some ACLs have been performing liquidation activities on certain 504 loans since the publication of the final rule. Therefore, SBA will provide compensation from its administrative budget and on an interim basis, is setting the liquidation compensation percentages as follows:

For all liquidations of 504 loans that have been completed by an ACL as of the date of this notice, where the liquidation plan was approved by SBA after the date the CDC became an ACL, SBA will pay a compensation fee of 10% of the net recovery proceeds realized from the sale of collateral or other liquidation actions on an individual loan up to $25,000 for each such loan and 5% of the realized net recovery proceeds above such amounts.

For all liquidations currently in progress that are being pursued by an ACL in accordance with an SBA approved liquidation plan that was approved after the date the CDC became an ACL, SBA will pay a compensation fee of 10% of the net recovery proceeds realized from the sale of collateral or other liquidation actions on an individual loan up to $25,000 for each such loan and 5% of the realized net recovery proceeds above such amounts.

For all liquidations by an ACL on 504 loans for which the debentures were purchased after May 14, 2007 (the effective date of the final rule), through the date of this notice, and for which a liquidation plan has not yet been approved, SBA will pay a compensation fee of 4% of the net recovery proceeds realized from the sale of collateral or other liquidation actions on an individual loan up to $25,000 for each such loan and 2% of the realized net recovery proceeds above such amounts. Liquidation plans for these loans must be submitted to SBA Commercial Loan Centers in Fresno, CA or Little Rock, AK within 90 calendar days from the date of this notice.

For any 504 loan for which the debenture has not yet been purchased, SBA is unable to pay any compensation fees at this time. Any future change will be communicated in the **Federal Register**.

Pursuant to 13 CFR 120.542(c), all requests for compensation fees must be received by SBA within nine months from the date of SBA's purchase of the defaulted debenture. Fee requests not received within such timeframe will be automatically rejected.

**Authority:** 13 CFR 120.542.

**Grady Hedgespeth,**

*Director of Financial Assistance.*

[FR Doc. E8–7067 Filed 4–3–08; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Region II Buffalo District Advisory Council; Public Meeting

The U.S. Small Business Administration Region II Buffalo District Advisory Council located in the geographical area of Buffalo, New York, will hold a public meeting on Wednesday, April 9, 2008, starting at 10 a.m. eastern standard time.

The meeting will take place at HSBC Bank USA, One HSBC Center, Buffalo, New York to discuss such matters that may be presented by members, and staff of the U.S. Small Business Administration, or others present.

Anyone wishing to make an oral presentation to the Board must contact Franklin J. Sciortino, District Director, Buffalo District Office, in writing by letter or fax no later than Friday, April 4, 2008 in order to be put on the agenda. Franklin J. Sciortino, District Director, Buffalo District Office, U.S. Small Business Administration, Niagara Center, 540 Niagara Center, 130 S. Elmwood Avenue, Buffalo, New York 14202; telephone (716) 551–4301 or fax (716) 551–4418.

**Cherylyn H. Lebon,**

*Committee Management Officer.*

[FR Doc. E8–7063 Filed 4–3–08; 8:45 am]

BILLING CODE 8025–01–P

## OFFICE OF SPECIAL COUNSEL

### Agency Information Collection Activities; Request for Comment

**AGENCY:** Office of Special Counsel.

**ACTION:** First Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), and implementing regulations at 5 CFR part 1320, the U.S. Office of Special Counsel (OSC), plans to request approval from the Office of Management and Budget (OMB) for use of four previously approved information collections consisting of complaint

forms. These collections are listed below. The current OMB approval for Forms OSC-11, OSC-12, OSC-13, OSC-14 and the OSC Survey expire 9/30/08. We are submitting all four forms and the electronic survey for renewal, based on the upcoming date of expiration. Two of the four forms are being revised, Forms OSC-11 and OSC-12. Form OSC-11 has had major changes made to its electronic version, so that it has a certain amount of ''intelligence'' now built in. Depending upon your responses, it navigates you to the proper sections; it also has help menus for those who need more information prior to making their selections. The electronic form OSC-12 had minor modifications made to it, in order to allow it to be integrated into the new software used to support form OSC-11.

Current and former Federal employees, employee representatives, other Federal agencies, state and local government employees, and the general public are invited to comment on this information collection for the first time. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of OSC functions, including whether the information will have practical utility; (b) the accuracy of OSC's estimate of the burden of the proposed collections of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Comments should be received by May 16, 2008.

**ADDRESSES:** Roderick Anderson, Director of Management and Budget, U.S. Office of Special Counsel, 1730 M Street, NW., Suite 218, Washington, DC 20036–4505.

**FOR FURTHER INFORMATION CONTACT:** Roderick Anderson, Director of Planning and Analysis at the address shown above; by facsimile at (202) 254–3715. The paper versions of the complaint forms for the collection of information are available for review on OSC's Web site, at http://www.osc.gov/forms.htm. The screen captures of the electronic forms are available for review on OSC's web site at http://www.osc.gov/library.htm. For those wishing to test out the new functionality of the ''interactive'' form OSC-11, it will be available to you during the second, 30 day notice, where you will be able to create a user name and password, and log in to test out the form.

**SUPPLEMENTARY INFORMATION:** OSC is an independent agency responsible for, among other things, (1) investigation of allegations of prohibited personnel practices defined by law at 5 U.S.C. 2302(b), protection of whistleblowers, and certain other illegal employment practices under titles 5 and 38 of the U.S. Code, affecting current or former Federal employees or applicants for employment, and covered state and local government employees; and (2) the interpretation and enforcement of Hatch Act provisions on political activity in chapters 15 and 73 of title 5 of the U.S. Code.

*Title of Collections:* (1) Form OSC-11, (Complaint of Possible Prohibited Personnel Practice of Other Prohibited Activity; (2) Form OSC-12 (Information about filing a Whistleblower Disclosure with the Office of Special Counsel); (3) Form OSC-13 (Complaint of Possible Prohibited Political Activity (Violation of the Hatch Act)); (4) Form OSC-14 Complaint of Possible Violation of the Uniformed Services Employment and Reemployment Rights Act (USERRA).

**Type of Information Collection**

*Request:* Approval of a previously approved collection of information, of which the forms and survey expire on 9/30/08. Also request that the revised electronic versions of forms OSC-11 and OSC-12 be approved.

*Affected public:* Current and former Federal employees, applicants for Federal employment, state and local government employees, and their representatives, and the general public.

*Respondent's Obligation:* Voluntary.

*Estimated Annual Number of Respondents:* 2,700.

*Frequency:* Daily.

*Estimated Average Amount of Time for a Person to Respond:* 64 minutes.

*Estimated Annual Burden:* 2,899 hours.

*Abstract:* This form is used by current and former Federal employees and applicants for Federal employment to submit allegations of possible prohibited personnel practices or other prohibited activity for investigation and possible prosecution by OSC.

Dated: March 31, 2008.

**Scott J. Bloch,**

*Special Counsel.*

[FR Doc.E8–7030 Filed 4–3–08; 8:45 am]

**BILLING CODE 7405–01–S**

## DEPARTMENT OF STATE

**[Public Notice: 6148]**

### 30-Day Notice of Proposed Information Collection: DS–160, Nonimmigrant Visa Electronic Application, OMB 1405–XXXX

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Nonimmigrant Visa Electronic Application
- *OMB Control Number:* None
- *Type of Request:* New Collection
- *Originating Office:* Bureau of Consular Affairs, Visa Services (CA/VO)
- *Form Number:* DS–160
- *Respondents:* All nonimmigrant visa applicants
- *Estimated Number of Respondents:* 10 million
- *Estimated Number of Responses:* 10 million
- *Average Hours Per Response:* 75 minutes
- *Total Estimated Burden:* 12,500,000 hours
- *Frequency:* Once per visa application
- *Obligation to Respond:* Required to obtain benefit

**DATES:** Submit comments to the Office of Management and Budget (OMB) for up to 30 days from April 4, 2008.

**ADDRESSES:** Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- *E-mail: kastrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- *Fax:* 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** You may obtain copies of the proposed information collection and supporting documents from Lauren Prosnik, who may be reached at 202–663–2951.

**SUPPLEMENTARY INFORMATION:** We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

*Abstract of Proposed Collection:*

The Nonimmigrant Visa Electronic Application (DS–160) will be used to collect biographical and other information from individuals seeking a nonimmigrant visa. The consular officer uses the information collected to determine the applicant's eligibility for a visa. This collection combines questions from current information collections DS–156 (Nonimmigrant Visa Application), DS–156E (Nonimmigrant Treaty Trader Investor Application), DS–156K (Nonimmigrant Fiancé Application), DS–157 (Nonimmigrant Supplemental Visa Application), DS–158 (Contact Information and Work History Application), and DS–3052 (Nonimmigrant V Visa Application).

*Methodology:*

The DS–160 will be submitted electronically to the Department via the internet. The applicant will be instructed to print a confirmation page containing a bar coded record locator, which will be scanned at the time of processing. Applicants who submit the electronic application will no longer submit paper-based applications to the Department.

Dated: March 5, 2008.

**Stephen A. Edson,**

*Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.*

[FR Doc. E8–6989 Filed 4–3–08; 8:45 am]

**BILLING CODE 4710–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Aviation Rulemaking Advisory Committee; Renewal

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of renewal.

**SUMMARY:** Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act, and in accordance with section 102–3.65, title 41 of the Code of Federal Regulations, the FAA gives notice it has renewed the Aviation Rulemaking Advisory Committee (ARAC) for a 2-year period beginning March 20, 2008. The Committee's primary purpose is to provide the public with an earlier opportunity to participate in the FAA's rulemaking process. It will continue to operate in accordance with the rules of the Federal Advisory Committee Act and the Department of Transportation, FAA Committee Management Order (1110.30C).

For further information about the ARAC, please contact Ms. Gerri Robinson, FAA Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591; telephone number: 202–267–9678.

Issued in Washington, DC, on March 28, 2008.

**Pamela A. Hamilton-Powell,**

*Executive Director, Aviation Rulemaking Advisory Committee.*

[FR Doc. E8–7075 Filed 4–3–08; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No: FAA–2008–23639]**

### Deadline for Notification of Intent To Use the Airport Improvement Program (AIP) Sponsor, Cargo, and Nonprimary Entitlement Funds for Fiscal Year 2008

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces June 1, 2008, as the deadline for each airport sponsor to notify the FAA whether or not it will use its fiscal year 2008 entitlement funds available under Public Law 110–190 to accomplish AIP-eligible projects that the sponsor previously identified through the Airports Capital Improvement Plan (ACIP) process during the preceding year. If a sponsor does not declare their intention regarding the use of 2008 entitlement funds by June 1, 2008, FAA will be unable to take the necessary actions to designate these as ''protected'' carryover funds and these funds would not be carried over if FAA spending authority from the Airport and Airway Trust Fund is not extended beyond June 30, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wayne Heibeck, Deputy Director, Office of Airport Planning and Programming, APP–2, on (202) 267–8775.

**SUPPLEMENTARY INFORMATION:** Section 47105(f) of title 49, United States Code, provides that the sponsor of each airport to which funds are apportioned shall notify the Secretary by such time and in a form as prescribed by the Secretary, of the sponsor's intent to apply for the funds apportioned to it (entitlements). This notice applies only to those airports that have had entitlement funds apportioned to them, except those nonprimary airports located in designated Block Grant States. Sponsors intending to apply for any of their available entitlement funds, including those unused from prior years, shall submit by June 1, 2008, a written indication to the designated Airports District Office (or Regional Office in regions without Airports District Offices) that they will advertise, bid, and submit an application prior to June 10, 2008, or by the date established by the designated Airport District or Regional Office.

This notice is promulgated to expedite and prioritize the grant-making process. In the past, the FAA has established a deadline of May 1 for an airport sponsor to declare that it will defer use of its entitlement funding. Considering the AIP program has been extended for only 9-months into the middle of a fiscal year, and uncertainty about additional statutory action before the end of the fiscal year, the FAA is establishing June 1 as the deadline for each airport sponsor to notify the FAA whether or not it will use its fiscal year 2008 entitlement funds.

Public Law 110–190, enacted on February 28, 2008, amended section 48103 of title 49, United States Code, to extend the Airport Improvement Program (AIP) for the 9-month period beginning October 1, 2007 and ending on June 30, 2008. This law enables the FAA to use a portion of the AIP obligation authority made available under Public Law 110–161 (''Consolidated Appropriations Act, 2008''). Although the AIP grant authority available for FY2008 does not expire on June 30, 2008, the FAA's expenditure authority from the Airport and Airway Trust Fund will expire on June 30 in the absence of an additional statutory extension. Therefore, to avoid the risk of not being able to carryover funds should an additional extension not be enacted, AIP funds should be obligated in FAA's accounting records on or before June 20. Obligations must be made on or before June 20, rather than June 30 because the FAA's accounting systems will be taken off-line to perform the end of the month closeout shortly after this date.

Sponsors have three options available to them regarding AIP grants during this 9-month period. First, sponsors may

elect to make an application for a grant based on entitlements currently available to them. Sponsors that elect to take such a grant must submit grant applications to the FAA no later than June 10, 2008, in order to meet the June 20, 2008, obligation deadline. Second, sponsors may elect to wait until after the June 1, 2008 notification date for protection of carryover entitlements. However, if a sponsor does not declare their intention regarding the use of 2008 entitlement funds by the June 1 deadline, FAA will be unable to take the necessary actions to designate these as ''protected'' carryover funds and these funds would not be carried over if FAA's Trust Fund expenditure authority is not extended beyond June 30, 2008. Third, sponsors may elect to declare their intention to carryover the entitlements prior to the June 1, 2008 deadline through sending an acceptable written notification of such intention by June 1, 2008. FAA will then issue discretionary grants in an aggregate amount not to exceed the aggregate amount of deferred entitlement funds pursuant to the authority and limitations in section 471 17(f). Airport sponsors may request their unused carryover entitlements that have been deferred after September 30, 2008 as provided in current law.

If a statutory extension beyond June 30th of FAA's authority to make expenditures from the Trust Fund is enacted, and if additional AIP contract authority for fiscal year 2008 is made available, and FAA is therefore able to use the remaining obligation authority under Public Law 110–161 through September 30, 2008, the deadline for each airport sponsor to notify the FAA that it will use the remainder of its entitlement funds will be July 9, 2008. Sponsors intending to apply for any of their available entitlement funds, including those unused from prior years, those previously apportioned pursuant to Public Law 110–160, or those apportioned through a statutory extension for fiscal year 2008 entitlement funds shall submit by July 9, 2008, a written indication to the designated Airports District Office (or Regional Office in regions without Airports District Offices) that they will advertise, bid, and submit an application prior to August 1, 2008, or by the date established by the designated Airport District or Regional Office.

Issued in Washington, DC on March 28, 2008.

**Wayne Heibeck**

*Deputy Director, FAA Office of Airport Planning and Programming.*

[FR Doc. E8–6943 Filed 4–3–08; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Seventy-Sixth Meeting, RTCA Special Committee 159: Global Positioning System (GPS)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of RTCA Special Committee 159 meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Global Positioning System (GPS).

**DATES:** The meeting will be held April 14–18, 2008 from 9 a.m. to 4:30 p.m. (unless stated otherwise).

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 meeting. The plenary agenda will include:

**April 14**

- All Day, Working Group 2C, Inertial (GPS/Inertial), Macintosh-NBAA Room & Hilton ATA Room.

**April 15**

- All Day, Working Group 4, Precision Landing Guidance (GPS/LAAS), MacIntosh-NBAA Room & Hilton ATA Room.

**April 16**

- All Day, Working Group 2, Wide Area Augmentation System (GPS/WAAS), ARINC Room.
- All Day, Working Group 4, Precision Landing Guidance (GPSILAAS), MacIntosh-NBAA Room & Hilton ATA Room.

**April 17**

- All Day, Working Group 4, Precision Landing Guidance (GPS/LAAS), MacIntosh-NBAA Room & Hilton ATA Room Morning (9–12 p.m.) (tentative), WG–6, Interference (GPS Interference), Colson Board Room.

**April 18**

*Plenary Session*

- Chairman's Introductory Remarks.
- Approval of Summary of the Seventy-Fifth Meeting held January 25, 2008, 2007, RTCA Paper No. 071–081SC159–962.
- Review Working Group (WG) Progress and Identify Issues for Resolution.
  - GPS/3rd Civil Frequency (WG–1).
  - GPSIWASS (WG–2).
  - GPS/GLONASS (WG–2A).
  - GPS/Inertial (WG–2C).
  - GPS/Precision Landing Guidance and (WG–4).
  - GPS/Airport Surface Surveillance (WG–5).
  - GPS/Interference (WG–6).
  - GPS/Antennas (WG–7).
  - GPS/GRAS (WG–8).
- Ad Hoc Group—Report—Proposed Activity—GPS L1 Only MOPS.
- Review of EEJROCAE Activities.
- Assignment/Review of Future Work.
- Other Business.
- Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 26, 2008.

**Francisco Estrada C.,**

*RTCA Advisory Committee.*

[FR Doc. E8–6928 Filed 4–3–08; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Forty-Fourth Meeting, RTCA Special Committee 186: Automatic Dependent Surveillance-Broadcast (ADS–B)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of RTCA Special Committee 186 Automatic Dependent Surveillance-Broadcast (ADS–B) meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 186

Automatic Dependent Surveillance-Broadcast (ADS–B).

**DATES:** The meeting will be held April 21–25, 2008, at 9 a.m. (unless otherwise noted).

**ADDRESSES:** The meeting will be held at RTCA Conference Rooms, 1828 L Street, NW., Suite 805, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036, (202) 833–9339; fax (202) 833–9434 Web site *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. Appendix 2), notice is hereby given for a Special Committee 186 meeting. The agenda will include:

**April 21**

- All Day, ASSAP & CDTI Subgroups, MacIntosh-NBAA Room & Hilton ATA Room.
- All Day, RFG, Colson Board Room.
- All Day, WG–1/ATSA SURF IA, ARINC Room.

**April 22**

- All Day, ASSAP & CDTI Subgroups, MacIntosh-NBAA Room & Hilton ATA Room.
- All Day, RFG, Colson Board Room.
- All Day, WG–1/ATSA SURF IA, ARINC Room.

**April 23**

- All Day, ASSAP & CDTI Subgroups, MacIntosh-NBAA Room & Hilton ATA Room.
- All Day, RFG, Colson Board Room.
- All Day, WGI/ATSA SURF IA, ARINC Room.

**April 24–25**

- Open Plenary (Chairman's Introductory Remarks, Review Meeting Agenda, Review/Approval of the Forty-Third Meeting Summary, RTCA Paper No. 046–08/SC186–259, Date, Place, and Time of Next Meeting).
- FAA Surveillance and Broadcast Services (SBS) Program—Status.
- Working Group Reports.
  - WG–1—Operations and Implementation.
  - WG–2—TIS–B MASPS.
  - WG–3—1090 MHz MOPS.
  - WG–4—Applications Technical Requirements.
  - WG–5—UAT MOPS.
  - RFG—Requirements Focus Group.
- Consider for Approval—New Document—Safety, Performance and Interoperability Requirements Document for the In-trail Procedure in Oceanic Airspace (ATSA–ITP) Application, RTCA Paper No. 059–08/SC186–260.
- Consider for Approval—New Document—Minimum Operational Performance Standards (MOPS) for Aircraft Surveillance Applications Systems (ASAS), RTCA Paper No. 071–08/SC196–261.
- Review of EUROCAE Activities.
- Closing Plenary Session (New/Other Business, Review Actions Items/Work Program, Adjourn).

**Note**

- ASAS—Aircraft Surveillance Applications System.
- ASSAP—Airborne Surveillance & Separation Assurance Processing.
- CDTI—Cockpit Display of Traffic Information.
- MOPS—Minimum Operational Performance Standards.
- REG—Requirements Focus Group.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 27, 2008.

**Francisco Estrada C.,**

*RTCA Advisory Committee.*

[FR Doc. E8–6929 Filed 4–3–08; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Nineteenth Meeting: RTCA Special Committee 207/Airport Security Access Control Systems

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of RTCA Special Committee 207 Meeting, Airport Security Access Control Systems.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 207, Airport Security Access Control Systems.

**DATES:** The meeting will be held April 29, 2008, from 9:30 a.m.–4 p.m.

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Colson Board Room, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 207 meeting. The agenda will include:

**April 29**

- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks).
- Review of Meeting Summary, RTCA Paper No. 078–081SC207–047.
- Martime TWIC Report.
- ACTS Report.
- Comment review by section.
  - Workgroup 1: Introduction.
  - Workgroup 2: Requirements and System Design.
  - Workgroup 3: Local Identity Management System.
  - Workgroup 4: Physical Access Control.
  - Workgroup 5: Intrusion Detection Systems.
  - Workgroup 6: Video Systems.
  - Workgroup 7: Security Operating Center.
  - Workgroup 8: Communications Infrastructure.
  - Workgroup 9: General Considerations.
  - Workgroup 10: Appendices.
- Consider for Approval—Revised DO–230A—Standards for Airport Security Access Control Systems, RICA Paper No. 070–081SC207–046.
- Closing Plenary Session (Other Business. Establish Agenda, Date and Place of Following Meetings).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 27, 2008.

**Francisco Estrada C.,**

*RTCA Advisory Committee.*

[FR Doc. E8–6945 Filed 4–3–08; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Seventh Meeting, Special Committee 215 Aeronautical Mobile Satellite (Route) Services Next Generation Satellite Services and Equipment

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of RTCA Special Committee 215, Aeronautical Mobile Satellite (Route) Services, Next Generation Satellite Services and Equipment.

**SUMMARY:** The FAA is issuing this notice to advise the public of a third meeting of RTCA Special Committee 215, Aeronautical Mobile Satellite (Route) Services, Next Generation Satellite Services and Equipment.

**DATES:** The meeting will be held April 30–May 1, 2008, 9 a.m.

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805 Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org* for directions.

**Note:** Dress is Business Casual.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 215 meeting. The agenda will include:

**Wednesday, April 30, 2008**

- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks)
- Review and Approval of Agenda for Seventh Plenary
- Review and Approval of Sixth Meeting Summary (215–026; RTCA Paper No. XXX–08/SC215–XXX)
- DO–262 Normative Appendix
  - Drafting Status Report
  - Review of Action List and Outstanding Actions
  - Review of Comments and Approval Draft
  - Review of FRAC and PMC Approval Processes
- DO–270 Normative Appendix
  - Report from Drafting Group
  - Review of Action List and Outstanding Action
  - Subnetwork Operational Approval Process
  - Review and Discussion of FAA Satellite Voice Advisory Circular (D. Robinson)
- Closing Plenary Session (Any Other Business, Review of Next Plenary Dates, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 26, 2008.

**Francisco Estrada C.,**

*RTCA Advisory Committee.*

[FR Doc. E8–6927 Filed 4–3–08; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2008–13]**

### Petition for Exemption; Summary of Petition Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number involved and must be received on or before April 24, 2008.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2008–0030 using any of the following methods:

- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- Fax: Fax comments to the Docket Management Facility at 202–493–2251.
- Hand Delivery: Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jan Thor, ANM–113, (425) 227–2127, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057–3356; or Frances Shaver, ARM–204, (202) 267–9681, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 28, 2008.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

### Petition for Exemption

*Docket No.:* FAA–2008–0030.

*Petitioner:* Fokker Services, B.V.

*Section of 14 CFR Affected:* §§ 26.11, 26.43, 26.45 and 26.49.

*Description of Relief Sought:* Fokker Services, B.V., requests their Models F27 Mk200 through Mk1000 and F28 Mk1000 through Mk4000 be exempt from the requirements contained in §§ 26.11, 26.43, 26.45 and 26.49. Section 26.11 requires development of instructions for continued airworthiness applicable to an airplane's electrical wiring interconnection systems. Sections 26.43, 26.45, and 26.49 are requirements related to the development of damage tolerance data for repairs and alterations.

[FR Doc. E8–7083 Filed 4–3–08; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Petition for Exemption From the Vehicle Theft Prevention Standard; Volkswagen

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Grant of petition for exemption.

**SUMMARY:** This document grants in full the petition of Volkswagen Group of America (VW) in accordance with § 543.9(c)(2) of 49 CFR part 543, *Exemption from the Theft Prevention Standard*, for the Audi Q5 vehicle line beginning with model year (MY) 2009. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

**DATES:** The exemption granted by this notice is effective beginning with model year (MY) 2009.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA,1200 New Jersey Avenue, SE., West Building, W43–439, Washington, DC 20590. Ms. Ballard's phone number is (202) 366–0846. Her fax number is (202) 493–2290.

**SUPPLEMENTARY INFORMATION:** In a petition dated February 15, 2008, VW requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541) for the Audi Q5 vehicle line beginning with MY 2009. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard*, based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one of its vehicle lines per year. VW's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

VW's petition provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for its new multipurpose vehicle line. VW will install its passive, transponder-based, electronic immobilizer antitheft device as standard equipment on its Audi Q5 vehicle line beginning with MY 2009. Key components of the antitheft device will include a passive immobilizer, an immobilizer control unit, an electronic ignition lock, an adapted ignition key, an engine control unit, an electronic steering column lock (ELV), and an automatic gear (if available). VW stated that the device is activated by turning the key in either of the front door locks to the ''lock'' position or by locking the vehicle with the remote key fob or an optional keyless entry and locking control. The antitheft device will also include an audible and visible alarm feature that will monitor and protect the doors, rear hatch, and hood against unauthorized entry. If an unauthorized entry is attempted, the horn will sound and the vehicle's lights will flash. VW also stated that the vehicle's radio, amplifier and multi-media interface are theft deterrent protected and if removed from the car, the components will not operate unless re-activated by an authorized dealer.

VW stated that the Audi Q5's immobilizer prevents the vehicle from being operated by unauthorized persons. When the ignition key is turned to the ''on'' position, the key's transponder, the immobilizer control unit, the ELV, and the engine control unit initiate a complex set of tests to determine if vehicle start-up should be enabled. If the tests fail, the vehicle cannot be started. The ignition system is monitored in the sense that if an external voltage is applied in an attempt to by-pass the immobilizer system, the alarm is triggered.

In addressing the specific content requirements of 543.6, VW provided its own test information on the reliability and durability of its device. VW conducted tests based on its own specified standards and believes that the device is reliable and durable since the device complied with its specified requirements for each test.

In its petition, VW further stated that because the Audi Q5 is a new vehicle line, there is no historic theft data published for a similar Audi vehicle line. VW also stated that its antitheft system will be at least as, or more, effective in reducing and deterring theft as other comparable vehicles installed with an alarm and engine immobilizer. VW further stated that the theft reduction benefits from immobilizer systems cited in recently granted petitions for exemptions have included a 70% reduction in 1997 immobilizer-equipped Ford Mustang thefts compared to 1995 models without an immobilizer. Based on Highway Loss Data Institute (HLDI) data, BMW vehicles experienced theft loss reductions resulting in a 73% decrease in relative claim frequency and a 78% lower average loss payment per claim for vehicles equipped with an immobilizer. The agency agrees that the device is substantially similar to devices in these and other vehicle lines for which the agency has already granted exemptions.

The agency also notes that the device will provide the five types of performance listed in § 543.6(a)(3): promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for exemption from the parts-marking requirements of part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts marking requirements of part 541. The agency finds that VW has provided adequate reasons for its belief that the antitheft device for the Audi Q5 vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information VW provided about its device.

For the foregoing reasons, the agency hereby grants in full VW's petition for exemption for the Audi Q5 vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If VW decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major

component parts and replacement parts).

NHTSA notes that if VW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, section 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that section 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend, in drafting Part 543, to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

**Authority:** 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: March 31, 2008.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. E8–7098 Filed 4–3–08; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Ex Parte No. 290 (Sub-No. 5) (2008–2)]**

### Quarterly Rail Cost Adjustment Factor

**AGENCY:** Surface Transportation Board.

**ACTION:** Approval of rail cost adjustment factor.

**SUMMARY:** The Board has approved the second quarter 2008 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The second quarter 2008 RCAF (Unadjusted) is 1.077. The second quarter 2008 RCAF (Adjusted) is 0.497. The second quarter 2007 RCAF–5 is 0.471.

**EFFECTIVE DATE:** March 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Pedro Ramirez, (202) 245–0333. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Board's decision, which is available on our Web site *http://www.stb.dot.gov*. To purchase a copy of the full decision, write to, e-mail or call the Board's contractor, ASAP Document Solutions; 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail *asapdc@verizon.net*; phone (202) 306–4004. [Assistance for the hearing impaired is available through FIRS: 1–800–877–8339.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: March 31, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey and Commissioner Buttrey.

**Anne K. Quinlan,**

*Acting Secretary.*

[FR Doc. E8–7079 Filed 4–3–08; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 35119]**

### Nittany and Bald Eagle Railroad Company—Temporary Trackage Rights Exemption—Norfolk Southern Railway Company

Norfolk Southern Railway Company (NSR) has agreed to grant non-exclusive, temporary overhead trackage rights to Nittany and Bald Eagle Railroad Company (N&BE) over a portion of NSR's line between milepost 194.2, Lock Haven, PA, and milepost 139.2, Driftwood, PA, a distance of approximately 55 miles.[1]

The transaction is scheduled to be consummated on or after April 23, 2008, the effective date of the exemption (30 days after the exemption was filed). The temporary trackage rights will expire on December 30, 2008.

The purpose of the temporary trackage rights is to allow N&BE adequate bridge train service for temporary, seasonal traffic originating on the N&BE for delivery to an off-line destination.

As a condition to this exemption, any employee affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), and any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Any stay petition must be filed on or before April 16, 2008 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110–161, 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35119, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Richard R. Wilson, 127 Lexington Ave., Suite 100, Altoona, PA 16601.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: March 28, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Anne K. Quinlan,**

*Acting Secretary.*

[FR Doc. E8–6865 Filed 4–3–08; 8:45 am]

**BILLING CODE 4915–01–P**

[1] A redacted version of the trackage rights agreement between N&BE and NSR was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The request for a protective order is being addressed in a separate decision.

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Minimum Security Devices and Procedures

**AGENCY:** Office of Thrift Supervision (OTS), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

**DATES:** Submit written comments on or before May 5, 2008. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain.*

**ADDRESSES:** Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725–17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

**FOR FURTHER INFORMATION CONTACT:** For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, *ira.mills@ots.treas.gov* (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

*Title of Proposal:* Minimum Security Devices and Procedures.

*OMB Number:* 1550–0062.

*Form Number:* N/A.

*Description:* The requirement that savings associations establish a written security program is necessitated by the Bank Protection Act (12 U.S.C. 1881–1884), which requires the Federal supervisory agencies to promulgate rules establishing minimum standards with which each financial institution must comply with respect to the installation, maintenance, and operation of security devices and procedures to discourage robberies, burglaries, and larcenies, and to assist in the identification and apprehension of persons who commit such acts.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 832.

*Estimated Number of Responses:* 832.

*Estimated Burden Hours per Response:* 2 hours.

*Estimated Frequency of Response:* Annually.

*Estimated Total Burden:* 1,664 hours.

*Clearance Officer:* Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: March 31, 2008.

**Deborah Dakin,**

*Senior Deputy Chief Counsel, Regulations and Legislation Division.*

[FR Doc. E8–6971 Filed 4–3–08; 8:45 am]

BILLING CODE 6720–01–P

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Minority Thrift Certification Form

**AGENCY:** Office of Thrift Supervision (OTS), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

**DATES:** Submit written comments on or before May 5, 2008. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain.*

**ADDRESSES:** Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725–17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

**FOR FURTHER INFORMATION CONTACT:** For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, *ira.mills@ots.treas.gov*, (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

*Title of Proposal:* Minority Thrift Certification Form.

*OMB Number:* 1550–0096.

*Form Number:* Form 1661.

*Description:* OTS uses the results of the certification process to maintain an accurate listing of minority-owned thrifts. OTS provides training, technical assistance, and education programs to those thrifts throughout the year. In addition, OTS uses the list to provide information to potential investors who may be interested in supporting minority-owned thrifts.

Finally, OTS reports annually to Congress on its efforts to support minority-owned thrifts, in accordance with Section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 22.

*Estimated Number of Responses:* 22.

*Estimated Burden Hours per Response:* 30 minutes.

*Estimated Frequency of Response:* Annually.

*Estimated Total Burden:* 11 hours.

*Clearance Officer:* Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: March 31, 2008.

**Deborah Dakin,**

*Senior Deputy Chief Counsel, Regulations and Legislation Division.*

[FR Doc. E8–6972 Filed 4–3–08; 8:45 am]

BILLING CODE 6720–01–P

## U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

### Notice of Open Public Hearing

**AGENCY:** U.S.-China Economic and Security Review Commission.

**ACTION:** Notice of Open Public Hearing—April 24–25 2008, New Orleans, Louisiana.

**SUMMARY:** Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

*Name:* Larry Wortzel, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, evaluate and report to Congress annually on the national security implications and impact of the bilateral trade and economic relationship between the United States and the People's Republic of China, and to provide recommendations, where appropriate, to Congress for legislative and administrative action.

Pursuant to this mandate, the Commission will hold a public hearing in New Orleans, Louisiana.

**Background**

This event is the fourth in a series of public hearings the Commission will hold during its 2008 report cycle to collect input from leading experts in government, business, industry, academia and the public on the impact of the economic and national security implications of the U.S. growing bilateral trade and economic relationship with China. The April 24–25 hearing is being conducted to obtain commentary on the safety and trade issues related to imported seafood from China. This hearing will address the U.S. government and seafood industry perspectives, as well as the health and safety risks associated with Chinese seafood imports, and will be Co-chaired by Vice Chairman Carolyn Bartholomew and Commissioner Daniel Slane.

Information on upcoming hearings, as well as transcripts of past Commission hearings, can be obtained from the USCC Web Site *http//www.uscc.gov*.

**Purpose of Hearing**

The hearing is designed to assist the Commission in fulfilling its mandate by examining the effects on the U.S. fishing industry of imported seafood from China and the resulting health and safety risks associated with Chinese seafood imports. The hearing will also highlight how such factors negatively or positively affect U.S. companies, investors, and workers.

Copies of the hearing agenda will be made available on the Commission's Web site *http://www.uscc.gov*. Any interested party may file a written statement by April 24, 2008, by mailing to the contact below.

The hearing will be held in two sessions, one in the morning and one in the afternoon, on April 24 and a morning session on April 25 where Commissioners will take testimony from invited witnesses. There will be a question and answer period between the Commissioners and the witnesses. Public participation is invited during the open-microphone session for public comment at the conclusion of the afternoon session on April 24. Sign-up for open-microphone session will take place in the morning of April 24 beginning at 8:30 a.m. and will be on first come, first served basis. Each individual or group making an oral presentation will be limited to a total of 5 minutes. Because of time constraints, parties with common interests are encouraged to designate a single speaker to represent their views.

**DATE AND TIME:** Thursday, April 24, 2008, 9 a.m. to 3:45 p.m. and Friday, April 25, 2008, 9 a.m. to 1:30 p.m. Eastern Daylight Time. A detailed agenda for the hearing will be posted to the Commission's Web site *http://www.uscc.gov* in the near future.

**ADDRESSES:** The hearing will be held at the Pan American Life Conference and Media Center, Orleans Room located on the 11th floor in the Pan American Building at 601 Poydras Street, New Orleans, Louisiana 70130. Public seating is limited to about 50 people on a first come, first serve basis. Advance reservations are not required.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information concerning the hearing should contact Kathy Michels, Associate Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington DC 20001; phone: 202–624–1409, or via email at *kmichels@uscc.gov*.

**Authority:** Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Public Law 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7), as amended by Public Law 109–108 (November 22, 2005), and Public Law 110–161 (December 26, 2007).

Dated: April 1, 2008.

**Kathleen J. Michels,**

*Associate Director, U.S.-China Economic and Security Review Commission.*

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# Part II

# Department of Justice

## Antitrust Division

## United States v. Monsanto Company and Delta and Pine Land Company; Public Comments and Response on Proposed Final Judgment; Notice

## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States v. Monsanto Company and Delta and Pine Land Company; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes the comments received on the proposed Final Judgment in *United States* v. *Monsanto Company and Delta and Pine Land Company*, No. 1:07–cv–00992, filed in the United States District Court for the District of Columbia on May 31, 2007, and the United States's response to those comments.

Copies of the comments and the United States's response to the comments are available for inspection at the Department of Justice Antitrust Division, 325 Seventh Street, NW., Room 215, Washington, DC 20530, (202) 514–2481, and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

**J. Robert Kramer II,**

*Director of Operations, Antitrust Division.*

### In the United States District Court for the District of Columbia

### [Civil Action No.: 1:07–cv–00992]

United States of America, Plaintiff, v. Monsanto Company and Delta and Pine Land Company, Defendants. Hon. Ricardo M. Urbina

### Plaintiff United States's Response to Public Comments

**Table of Contents**

Plaintiff United States's Response to Public Comments
I. Background
A. The United States's Investigation of the Transaction
B. The Traited Cottonseed Markets
C. The Competitive Effects of the Transaction
D. The Proposed Remedy
II. Developments Since the Filing of the Complaint
A. Approval of Acquirers of the Enhanced Stoneville Assets
B. VipCot Assets Offered to Syngenta
C. Third Party License Modifications
D. Filing of Public Comments
III. The Standards Governing the Court's Public Interest Determination
A. The Appropriate Legal Standard
B. The Appropriate Inquiry Is Whether the Remedy Preserves Competition, Not Whether It Replicates DPL
IV. Response to Comments Criticizing the Sufficiency of the Remedy
A. Divestiture of the Stoneville Business Unit and Monsanto Germplasm Provide the Acquirer a Firm Foundation on Which to Compete in the MidSouth and Southeast Markets
1. Stoneville Infrastructure
2. Monsanto/Stoneville Germplasm
a. The Breeding Process
b. Stoneville Germplasm
c. Additional Monsanto Germplasm
i. Advanced Exotic Yield Lines
ii. MAB Populations
B. Additional DPL Germplasm Provides Important and Meaningful Value
1. The DPL germplasm is of high quality
2. The acquirer will be able to use this germplasm effectively
3. Monsanto/DPL's use of the germplasm does not diminish its value to the acquirer and provides farmers continued benefits
C. The Remedy Preserves Incentives and Opportunities for Effective Traited Cottonseed and Trait Development Competition
1. Syngenta will be able to effectively use the VipCot Assets
2. The remedy will preserve opportunities for trait developers to market non-Monsanto traits in competitive cottonseed
3. The remedy should not—and does not—guarantee the introduction of DuPont's OptimumGat trait
4. The remedy will preserve the number of ''platforms'' for trait development that existed pre-merger
V. Response to Comments That the Remedy Is Not Workable
A. The Divestitures and License Changes Are One-Time Events, Not Ongoing Behavioral Remedies
B. Monitoring Compliance With the Remedy Will Not Unduly Burden the United States or the Court
VI. Response to Comments That Raise Issues Beyond the Scope of the Court's Review
A. Crops Other Than Cotton
B. Conventional Cottonseed
C. The Southwest and West Traited Cottonseed Markets
D. Prices for Cottonseed Sold for Livestock Feed
E. Alleged Monsanto Exclusionary Business Practices
VII. Conclusion

### Plaintiff United States Response To Public Comments

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (''APPA'' or ''Tunney Act''), the United States hereby responds to the public comments received regarding the proposed Final Judgment in this case. After careful consideration of the comments, the United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint. The United States will move the Court for entry of the proposed Final Judgment after the public comments and this Response have been published in the **Federal Register**, pursuant to 15 U.S.C. 16(d).

On May 31, 2007, the United States filed the Complaint in this matter alleging that the proposed acquisition of Delta and Pine Land Company (''DPL'') by Monsanto Company (''Monsanto'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. Simultaneously with the filing of the Complaint, the United States filed the proposed Final Judgment and a Stipulation signed by plaintiff and defendants consenting to the entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act. Pursuant to those requirements, the United States filed a Competitive Impact Statement (''CIS'') in this Court on May 31, 2007; published the proposed Final Judgment and CIS in the **Federal Register** on June 15, 2007, see *United States* v. *Monsanto Co.* and Delta and Pine Land Co., 72 Fed. Reg. 33336–01, 2007 WL 1708314; and published summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, in The Washington Post for seven days beginning on June 28, 2007 and ending on July 4, 2007. The 60-day period for public comments ended on August 27, 2007, and eleven comments were received as described below and are attached hereto.

### I. Background

#### *A. The United States Investigation of the Transaction*

On August 14, 2006, Monsanto entered into an agreement to acquire DPL for approximately $1.5 billion. Over the following nine and a half months, the United States conducted an extensive, detailed investigation into the competitive effects of the proposed transaction. As part of this investigation, the United States issued Second Requests to the merging parties, as well as Civil Investigative Demands to all of the major cottonseed companies and cottonseed trait developers. The United States received and considered more than a million pages of responsive material and deposed relevant Monsanto and DPL executives. More than 125 interviews were conducted with customers, competitors, and others with knowledge of the industry and competitive conditions, including national and regional agricultural supply companies, grower organization representatives, USDA cotton experts, and agricultural economists and academics. The United States met repeatedly with concerned parties,

including DuPont, one of the commenters, analyzing their allegations and submissions.[1]

In its investigation, the United States considered the potential competitive effects of this transaction on numerous products and geographic areas. For several of these, the United States concluded that the proposed merger was unlikely to reduce competition.[2] As the Complaint alleges, the transaction did, however, threaten competition with respect to traited cottonseed sales in two geographic regions—the MidSouth and the Southeast.[3]

*B. The Traited Cottonseed Markets*

Most cottonseed sold today contains ''transgenic traits''—genetic material from other organisms that is inserted into the cottonseed germplasm to give the cotton plant desirable characteristics. Two types of transgenic traits currently are available: (1) Herbicide tolerance traits, such as Monsanto's ''Roundup Ready'' and recently introduced ''Roundup Ready Flex'' (''Flex''), which make the cotton plant able to withstand spraying with particular herbicides, and (2) insect resistance traits, such as Monsanto's ''Bollgard'' and new ''Bollgard II,'' which make the cotton plant toxic to certain pests.

Cotton farmers overwhelmingly prefer traited seeds because their use significantly reduces labor and input costs. In 2006, farmers planted about 87% of the cotton acres in the U.S. with traited seeds. *USDA Cotton Varieties Planted 2006 Crop Report*. Most traited cottonseed is ''stacked'' to include both herbicide-tolerant and insect-resistant traits. In the Southeast and MidSouth, 90.8% and 89.3% (respectively) of the seed sold in 2006 included both types of traits, and farmers now rarely purchase seed that contains only an insect-resistant trait.[4]

At the time the Complaint was filed, DPL and Monsanto, via its Stoneville business unit, were significant producers of traited cottonseed in the United States. Indeed, DPL and Stoneville together accounted for over 90% of traited cottonseed sales in the MidSouth and Southeast regions of the United States where cotton farmers place the most value on insect-resistant and herbicide-tolerant traits. That vigorous competition would have been lost as a result of the transaction.

As the Complaint alleges, Monsanto is currently the dominant provider of insect-resistant and herbicide-tolerant traits for cotton.[5] Monsanto's insect-resistant and herbicide-tolerant traits accounted for over 96% of the transgenic traits in cottonseed nationwide in 2006; over 98% of the traited cottonseed sold in 2006 in the MidSouth and Southeast contained Monsanto's traits. Indeed, Monsanto's traits are the only traits found in any of the traited cottonseed DPL sold prior to the merger.

DPL was, however, positioning itself to move away from Monsanto's traits by exploring options with several trait producers that were developing insect-resistant and herbicide-tolerant cotton traits. The most advanced of these efforts was work with Syngenta to introduce VipCot—an insect-resistant trait that would compete with Monsanto's Bollgard traits. DPL's work with Syngenta had reached a stage where DPL had successfully introduced VipCot into 42 of its elite breeding lines.[6] DPL had already stacked five of the VipCot traited lines with Flex prior to the merger and anticipated commercializing those lines in approximately 2009. Following DPL's breeding protocols, DPL anticipated that stacked versions of the other 37 VipCot lines would have been ready for commercialization sometime between 2012 through 2016.

DPL's efforts with respect to a non-Monsanto herbicide-tolerant trait were at a more preliminary stage. In the summer of 2006, DPL entered into a licensing agreement with DuPont to introduce seed with OptimumGat, an herbicide-tolerant trait that would compete with Monsanto's Flex trait. At the time the Complaint was filed, DPL had not successfully introduced OptimumGat into any of its elite breeding lines. Rather, development work to advance the OptimumGat project remained primarily with DuPont. As a backup to the OptimumGat venture, DPL had also entered into agreements to test two other herbicide-tolerant traits that would compete with Monsanto's Flex, including a trait being developed by Bayer called Glytol.

Using VipCot in combination with one of the three herbicide tolerance options that DPL was exploring, DPL envisioned bringing a limited quantity of cottonseed with a non-Monsanto stack of insect-resistant and herbicide-tolerant traits to market as early as 2012. But in light of standard breeding and testing time requirements, it likely would have taken DPL several years longer to entirely phase out Monsanto's traits. Equally important, DPL's ability or willingness to switch totally away from Monsanto's traits was dependent on several assumptions—namely that farmers were satisfied with VipCot's performance versus Monsanto's Bollgard traits, and that DPL found a successful non-Monsanto herbicide-tolerant trait in the next few years.

As the Complaint further alleges, Monsanto knew that DPL was working with other trait companies and feared that a possible outcome of those partnerships would be that DPL ceased offering Monsanto's traits in its cottonseeds.[7] Monsanto thus had begun to take steps to strengthen its own proprietary seed platform to support its cottonseed trait business. In fact, the United States's investigation revealed that Monsanto was making a concerted effort to grow its share of traited cottonseed sales.

Foremost among these efforts was Monsanto's acquisition in 2005 of Stoneville, which had approximately 15% of the market for traited cottonseed nationwide and a 33% and 9% share of the MidSouth and Southeast markets, respectively. After acquiring Stoneville, Monsanto made significant investments in the company, including: Investing in upgrades of new buildings and

[1] The United States also spoke multiple times with representatives from the offices of the Attorneys General of 27 states interested in the progress of the United States investigation, including representatives of 16 of the 17 states where cotton is grown in the United States (Georgia's office elected not to participate). In this proceeding, thirteen states, representing less than 20% of U.S. cotton production, have signed onto a comment (discussed infra) questioning the proposed Final Judgment. Of the states signing the comment, Delaware, Kentucky, Rhode Island, Utah and West Virginia elected not to participate in any of the communications between the United States and states's representatives during the United States investigation. The comment does not explain either the scope of the investigation, if any, those non-participating states undertook to reach their conclusions or the reasons why none of the commenting states has initiated independent legal action to enjoin the transaction.

[2] Indeed, the United States concluded that, viewed as a whole, the transaction was likely to create some efficiencies that could benefit consumers. A Monsanto-DPL combination brings together firms with complementary strengths and assets. Monsanto has proficiency in transgenic trait development, and DPL had expertise in cottonseed breeding. Merging allows the two programs to operate in tandem. Through the integration of trait development and cottonseed breeding, traited cottonseed could reach consumers faster and at lower cost

[3] See Complaint at 12–13.

[4] Today, traited cottonseeds that contain only insect resistance account for less than 2% of total traited acres.

[5] See Complaint at 2–3.

[6] As discussed below, the relief provided by the proposed Final Judgment calls for divestiture of 43 DPL lines containing VipCot. The 43rd line included in the VipCot Assets is a line that DPL acquired from Syngenta in 2006 that already contained VipCot.

[7] See Complaint at 9–10.

greenhouses, lab equipment, ginning and delinting equipment, and warehouse and equipment storage; hiring additional employees for the breeding facilities, particularly at its Maricopa, Arizona, breeding facility which targeted creating varieties for the Southeast; improving Stoneville's manufacturing facilities, such as adding bagging, dust collection, and handling equipment; and improving Stoneville's molecular marker capabilities and library.

Monsanto also had been engaging in other efforts to develop proprietary cotton germplasm. Those included (a) researching exotic strains of cottonseed (which the proposed Final Judgment refers to as the ''Advanced Exotic Yield Lines''), (b) mapping molecular markers for select breeding crosses that would enable Monsanto to expedite identification and further breeding of the most promising progeny from those crosses (which the proposed Final Judgment refers to as the ''MAB Populations''), and (c) establishing the Cotton States program, through which Monsanto obtains licenses to promising germplasm from university breeding programs and private breeders, and, after introducing traits, licenses the resulting traited cottonseed varieties to small cottonseed companies and distributors seeking to sell traited cottonseed under their own brands.

Monsanto's internal business plans projected that as a result of these efforts, Stoneville's market share in the Southeast and MidSouth would grow substantially over the next few years. Indeed, Monsanto projected that Stoneville, with Monsanto traits, and DPL, with non-Monsanto traits, would have roughly equal market shares by approximately 2015, with Dow and Bayer traited seeds holding much smaller shares. Accordingly, if unremedied, the combination of Monsanto and DPL would have combined the two largest traited cottonseed options for farmers in the MidSouth and Southeast.[8]

*C. The Competitive Effects of the Transaction*

Based on this evidence, the United States determined that the merger of the two companies would likely lessen competition in the near, medium and long term. In the near term, absent the transaction, Monsanto's efforts to increase Stoneville share in the MidSouth and Southeast would give farmers more choices and could lead to lower prices.[9] Also in the near term (beginning in approximately 2009), the entry of DPL seed containing Syngenta's VipCot trait stacked with Monsanto's Flex trait could have offered farmers a new insect-resistant trait option and put some pressure on the price for insect-resistant traits.[10] The United States's investigation revealed that the most significant competitive effect of the transaction likely would have occurred in the medium term (beginning in approximately 2012) when DPL would first be able to offer cottonseed stacked solely with non-Monsanto traits and farmers in the MidSouth and Southeast would benefit from the emergence of competition between two germplasm/trait platforms, namely, Stoneville seed with Monsanto traits and DPL seed with VipCot and a non-Monsanto herbicide-tolerant trait.

The United States also found that Monsanto's acquisition of DPL, if unremedied, would threaten longer term harm by deterring or delaying the entry of new types of cotton traits in the MidSouth and Southeast.[11] Cotton trait developers would not have a seed partner independent of Monsanto with seeds suitable for the MidSouth and Southeast. Given the significance of the MidSouth and Southeast cotton growing regions, the inability to reach farmers in these regions would reduce potential returns from investments in developing cotton traits. And even if other potential sources of revenue for trait developers were sufficient to support continued investment in cotton trait development,[12] the benefits of these investments would not reach farmers in the MidSouth and Southeast.

*D. The Proposed Remedy*

The proposed Final Judgment remedies the anticompetitive effects of the acquisition alleged in the Complaint-the elimination of competition between DPL and Monsanto for the development, breeding and sale of traited cottonseed and the elimination of DPL as a partner independent of Monsanto for developers of traits that would compete against Monsanto-in three principal ways:

First, the proposed Final Judgment requires Monsanto to divest the Enhanced Stoneville Assets to an acquirer who is capable of using the assets to compete effectively. The Enhanced Stoneville Assets include Stoneville's U.S. cottonseed business, key cottonseed lines developed by DPL for the MidSouth and Southeast, and additional Monsanto cotton breeding assets.

The Enhanced Stoneville Assets provide the acquirer what it needs to continue Monsanto's efforts to increase Stoneville's share and be an effective ongoing seed competitor in the near term and beyond. Moreover, the acquirer will be able to use these assets, on its own or in partnership with other trait developers, to breed and commercialize high quality cottonseed for the MidSouth and Southeast with non-Monsanto traits, preserving medium and longer-term competition that would otherwise have been lost as a result of the merger.

Second, the proposed Final Judgment requires Monsanto to divest the VipCot assets to Syngenta and to allow Syngenta to breed with the VipCot traited lines. This will preserve the potential for near term benefits from VipCot entry, as well as medium and longer term benefits from stacking VipCot with non-Monsanto herbicide traits (including other nascent traits) and developing improved germplasm.

Third, the proposed Final Judgment requires Monsanto to modify two sets of licenses to eliminate restrictions on the use of non-Monsanto traits: (1) Its cottonseed trait licenses with seed companies to permit licensees to breed and sell, without penalty, cottonseed containing non-Monsanto traits and cottonseed containing both licensed Monsanto traits and non-Monsanto traits, and (2) its Cotton States licenses to remove any provision that allows Monsanto to terminate the license if the

[8] The United States's investigation found that Bayer's efforts prior to the merger to develop germplasm for the Southeast and MidSouth, if successful, would not likely bear fruit any sooner than 2016. Given the early stage of Bayer's breeding efforts in those geographic areas, the United States did not rely on this as a source of potential entry. In contrast, Dow has developed some varieties suitable for the MidSouth and potentially the Southeast, which will enter the market some time in the 2008 to 2011 time frame. However, given limitations in its current trait licensing agreements with Monsanto, it was unclear that entry of Dow varieties would have a significant competitive effect in those markets.

[9] With its dominance in traits, Monsanto might have recaptured any seed price reductions through higher trait fees.

[10] Because DPL would have had to combine VipCot with a Monsanto herbicide-tolerant trait, Monsanto might have recaptured any reduction in fees for an insect-resistant trait through increases in fees for Monsanto's herbicide-tolerant trait.

[11] In addition to potentially new insect resistant and herbicide tolerant traits, there is current transgenic trait research regarding, among other things, drought tolerance, nematode resistance and yield.

[12] These other revenue opportunities arise from the fact that (a) many potential cotton traits have applications across other crops, including corn and soy, that offer significantly more revenue potential than cotton, (b) the demand for traited cottonseed outside the United States is significant and growing, and (c) there is substantial cotton acreage within the United States in regions other than the MidSouth and Southeast, namely the Southwest and West.

licensee sells cottonseed containing other traits.

In the United States's judgment, the asset divestitures and license modifications required by the proposed Final Judgment remedy the competitive harms identified in the Complaint.

## II. Developments Since the Filing of the Complaint

The United States filed the Complaint and Proposed Final Judgment on May 31, 2007. The Court entered the Hold Separate and Preservation of Assets Stipulation and Order on June 1, 2007, and Monsanto completed its acquisition of DPL on that same date. Since the filing of the Complaint, the following events have occurred in furtherance of the requirements set forth in the proposed Final Judgment and the Tunney Act:

### *A. Approval of Acquirers of the Enhanced Stoneville Assets*

Section IV.E. of the proposed Final Judgment requires defendants to divest the Enhanced Stoneville Assets to an acquirer acceptable to the United States. The acquirer must have a credible commitment to the traited cottonseed market and have the intent and capability of competing effectively. Shortly after acquiring DPL, Monsanto proffered Bayer CropScience (''Bayer'') and Americot Inc. (''Americot'') to the United States as potential acquirers of the Enhanced Stoneville Assets, with Bayer set to acquire all of the divestiture package except for certain assets relating to the Southwest market which would be sold to Americot. The United States evaluated the proposed acquirers, including analyzing the terms of the proposed purchase agreements, the terms of other recent contracts between Monsanto and Bayer, the market presence of both proposed acquirers, and other information bearing upon the acquirers' capabilities to use the divested assets effectively in competition with Monsanto/DPL.[13]

Bayer proposed to purchase the bulk of the Enhanced Stoneville Assets for $310 million. Its commitment to the cottonseed market is demonstrated by, among other things, its successful entry into the Southwest cottonseed market under the Fibermax and AFD brands.[14] Bayer's growth in this market has been impressive; it entered the Southwest market in 1999 and, by 2006, had a significant share of seed sales in that region and had displaced DPL as the market leader. In addition to cottonseed sales, Bayer has had an active cottonseed trait development program, which has resulted in the marketplace introduction of its Liberty Link herbicide-tolerant trait.[15] In addition to these cottonseed efforts, Bayer also operates one of the world's largest crop protection and agricultural chemical companies, providing it ready access to agricultural distribution channels in the MidSouth and Southeast as well as pesticide, herbicide, and seed treatment products to complement its cottonseed offerings.

Despite these strengths, Bayer has not been successful in cottonseed sales in the MidSouth and Southeast, largely as a result of inferior germplasm for those regions. Acquiring the Enhanced Stoneville Assets will enable Bayer to become a more effective competitor in the MidSouth and Southeast[16] by giving Bayer high-quality germplasm specifically targeted toward the regions' growing conditions, breeding stations focused on developing varieties for those regions, and experienced personnel.[17]

To avoid creating any competitive issue in the Southwest where Bayer is strong, Bayer did not acquire that portion of the Enhanced Stoneville Assets best suited for producing traited cottonseed for the Southwest region of the United States—i.e., the assets related to Stoneville's NexGen brand of cottonseed.[18] Those assets, which include cottonseed lines and a dedicated breeding program targeting the Southwest, generated over $16 million in sales for Stoneville in 2006, and Monsanto projected they would generate $36 million in sales by 2010. Americot, a regional cottonseed company founded in 1987 that sells seed predominantly in west Texas, acquired the NexGen assets for just over $6 million. With a recently upgraded breeding facility dedicated to developing lines for the Southwest, Americot is well positioned to use the NexGen assets effectively.

Based on analysis of these factors, the United States determined that divestiture of the Enhanced Stoneville Assets to Bayer and Americot satisfied the objectives of the proposed Final Judgment and approved the proposed acquirers. Monsanto divested the Enhanced Stoneville Assets on June 19, 2007.[19]

### *B. VipCot Assets Offered to Syngenta*

Section V of the proposed Final Judgment requires Monsanto to offer certain DPL cottonseed lines containing Syngenta's traits (the ''VipCot Assets'') to Syngenta. Under the proposed Final Judgment, Monsanto cannot satisfy the required divestiture of the VipCot Assets without the United States first approving the terms of the licenses pursuant to which Monsanto offers Syngenta the assets. Since May 31, 2007, the United States had numerous discussions with Monsanto and Syngenta regarding the terms of these licenses. On August 27, 2007, Monsanto and Syngenta entered into an interim Material Transfer and Use Agreement to facilitate transfer of VipCot traited cottonseed to Syngenta for further development prior to Monsanto providing final licenses that meet the

[13] The United States was already familiar with both Bayer and Americot's existing U.S. cottonseed operations, having interviewed representatives of these companies on numerous occasions and reviewed business documents provided by both companies during the Monsanto/DPL investigation.

[14] Bayer's willingness to commit such a large amount of capital to acquiring the assets also tends to indicate Bayer's interest in using the Enhanced Stoneville Assets to create a viable competitor to Monsanto/DPL.

[15] Liberty Link makes cotton tolerant to glufosinate herbicides and is only available in Bayer's FiberMax cottonseeds, which are primarily used in the Southwest where they perform well.

[16] Upon acquiring Stoneville, Bayer publicly noted, ''[t]he new germplasm and the geographic reach of the Stoneville business East of Texas ideally complement Bayer's cotton seed and trait business.'' See May 31, 2007 press release, ''Bayer CropScience agrees to acquire U.S. cotton seed company Stoneville for US-$310 million,'' available at <*http://www.bayercropscience.com/bayer/cropscience/cscms.nsf/id/20070529_EN?open&ccm=400*>.

[17] In its submitted comments, DuPont specifically questions Bayer's ability to compete in the MidSouth and Southeast, citing the fact that Bayer had not successfully penetrated those markets in the past. DuPont Comments at 18. See also AAI Comments at 16. However, DuPont's claim merely highlights Bayer's prior difficulty in accessing or developing competitive germplasm for these regions, rather than speaking to Bayer's ability to succeed once it has such germplasm. That Bayer can fully succeed when it has access to competitive germplasm is well documented by its successful entry in the Southwest market.

[18] Stoneville started its NexGen germplasm program to develop cottonseed adapted to growing conditions in the Southwest growing region. Bayer's Fibermax and AFD brands also have a significant presence in this region.

[19] The sale of divestiture assets during the pendency of the Tunney Act review of a proposed final judgment is consistent with the United States's standard practice, as is permitting closing of the transaction challenged in the Complaint. The materials filed with the Complaint included a Hold Separate and Preservation of Assets Stipulation, requiring the parties to maintain certain assets separate after the close of the merger (in this instance, DPL's assets) until the United States was assured that the acquirer or acquirers proposed by Monsanto for the Enhanced Stoneville Assets would meet the standards set forth in the proposed Final Judgment (i.e., the acquirer was capable of operating a viable cottonseed business using the divested assets). This procedural setting allowed Monsanto and DPL to close their merger shortly after the Complaint and Proposed Final Judgment were filed and to expeditiously complete the sale of the Enhanced Stoneville Assets to Bayer and Americot, thereby ensuring that neither the Enhanced Stoneville Assets nor DPL were held in competitive limbo during the pendency of the Court's review.

terms of the proposed Final Judgment. Pursuant to that agreement, Monsanto delivered to Syngenta certain seeds that the proposed Final Judgment requires Monsanto to offer to Syngenta. After obtaining approval from the United States, Monsanto, on November 27, 2007, offered to Syngenta the licenses required by the proposed Final Judgment.

*C. Third Party License Modifications*

Section VI of the proposed Final Judgment requires Monsanto to revise certain third-party cottonseed licenses and gives the United States sole discretion to approve the proposed revisions. The United States engaged in continuing negotiations with Monsanto to ensure that the revisions satisfied the terms of the proposed Final Judgment. On November 15, 2007, Monsanto, pursuant to Section VI.B. of the proposed Final Judgment, provided to the United States for its approval copies of the modified licenses Monsanto intended to offer to third party seed companies; the United States approved the modified licenses on November 20, 2007. Monsanto then provided to the licensees the offers containing the modified license language. The offers remain open until March 31, 2008.

*D. Filing of Public Comments*

During the 60-day public comment period called for by the Tunney Act, the United States received comments from the following eleven organizations and groups: the American Antitrust Institute (''AAI''); Attorneys General of Virginia, Arkansas, Delaware, Kentucky, Maryland, New Mexico, North Carolina, Ohio, Oklahoma, Rhode Island, Tennessee, Utah, and West Virginia (the ''States''); California Consumers United (''CCU''); E.I. du Pont de Nemours & Co. (''DuPont''; the Illinois Stewardship Alliance (''ISA''); the International Center for Technology Assessment/Food Safety (''ICTA''); a comment signed by the president of Plains Justice, the president of the Women, Food, and Agriculture Network, and the president of the Iowa Farmers Union (''Plains Justice''); a comment signed by a group of Texas cotton gins and other cotton based associations (''Texas Cotton Associations''); the Ohio Farmers Union (''OFU''); the Organization for Competitive Markets (''OCM''); and the Wisconsin Farmers Union (''WFU'').

The criticisms offered by the Commenters generally fall into four areas: (1) The appropriate standard of review; (2) the sufficiency of the divestiture to preserve competition in the relevant markets; (3) the workability of the remedy; and (4) purported competitive harms not alleged in the Complaint. Upon careful review, the United States believes that nothing in the comments warrants any changes to the proposed Final Judgment or is sufficient to suggest that entry of the proposed Final Judgment is not in the public interest. We address these issues below and explain why the criticisms raised in the comments are not valid.

**III. The Standards Governing the Court's Public Interest Determination**

*A. The Appropriate Legal Standard*

As discussed in detail in the Competitive Impact Statement (at 23–27), the Court, in making the public interest determination called for by the Tunney Act, is required to consider certain factors listed in the Act relating to the competitive impact of the judgment and whether it adequately remedies the harm alleged in the complaint.[20] This public interest inquiry is necessarily a limited one as the United States is entitled to deference in crafting its antitrust settlements, especially with respect to the scope of its complaint and the adequacy of its remedy. *See generally United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995); *United States* v. *SBC Commc'ns,* 489 F.Supp.2d 1, 12–17 (D.D.C. 2007).

With respect to the scope of the complaint, the Tunney Act review does not provide for an examination of possible competitive harms the United States did not allege. *See, e.g., Microsoft,* 56 F.3d at 1459 (stating that the district judge may not ''reach beyond the complaint to evaluate claims that the government did *not* make'').[21] The reviewing court may look beyond the scope of the complaint only when the complaint has been ''drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F.Supp.2d at 14. That is not the case here as the Complaint properly alleges the harm the transaction is likely to cause in the relevant product and geographic markets. Indeed, multiple commentors recognized the sufficiency of the Complaint: The States, for example, note that ''the United States acknowledges the significant anticompetitive effects that the acquisition will have on the development, production and distribution of cotton biotech traits and seeds.''[22] DuPont similarly states that ''the Complaint filed by the Justice Department's Antitrust Division details the serious harm to farmers and consumers that will result,'' and further acknowledges that the ''Complaint sets forth a clear and compelling story of the competitive injury that will result from the proposed transaction.''[23]

With respect to the sufficiency of the proposed remedy, a district court must accord due respect to the United States's views of the nature of the case, its perception of the market structure, and its predictions as to the effect of proposed remedies. *E.g., SBC Commc'ns,* 489 F.Supp.2d at 17 (United States entitled to ''deference'' as to ''predictions about the efficacy of its remedies''); see also CIS at 24–26. Under this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F.Supp.2d at 17. DuPont, referencing the Division's review of Monsanto's abandoned attempt to purchase DPL in 1998, suggests that the ''government has an extra burden * * * when it changes its view on an identical transaction.''[24] But the assertion finds no support in the language of the statute or the caselaw. This is not surprising given that it contravenes long-established precedent holding that a prosecutor's exercise of discretion carries no estoppel effect. Moreover, DuPont's position would inappropriately require the court to engage in extensive fact finding of historical events—in essence, a trial within a trial—simply to determine whether the two transactions were in fact ''identical'' and whether the government accepted a less effective remedy than it would have the first time.[25]

[20] See 15 U.S.C. 16(e)(1)(A) & (B). The Microsoft court explained that a court making a public interest determination under the Act should consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. Microsoft, 56 F.3d at 1458–62.

[21] Were a court to reject a proposed decree on the grounds that it failed to address harm not alleged in the complaint, it would offer the United States what the Court of Appeals for the D.C. Circuit referred to as a ''difficult, perhaps Hobson's choice,'' in that the United States would have to either redraft the complaint and pursue a case it believed had no merit, or drop its case and allow conduct it believed to be anticompetitive to go unremedied. Microsoft, 56 F.3d at 1456.

[22] States Comments at 6.

[23] DuPont Comments at 2 & 19.

[24] DuPont Comments at 3.

[25] In fact, DuPont's factual premise is flawed. Contrary to DuPont's suggestion, the fact that Monsanto abandoned its initial proposed acquisition of DPL in the face of a threatened enforcement action by the United States does not imply that no remedy would have been acceptable to the United States in 1999. Rather, it implies only that Monsanto was at that time unwilling to agree to remedies deemed necessary by the United States.

*B. The Appropriate Inquiry Is Whether the Remedy Preserves Competition, Not Whether It Replicates DPL*

Some of the commentors criticize the remedy, particularly the Enhanced Stoneville Assets divestiture, for not creating a competitor that mirrors DPL in scope and independence.[26] But they pose the wrong standard for evaluating the effectiveness of the remedy. Because the antitrust laws seek to protect competition, the purpose of the remedy is not to recreate DPL but to preserve the competition that DPL brought to the market—to ensure that cotton farmers continue to realize the competitive benefits they would have had but for the merger.

Thus, the key questions in evaluating the remedy are: (1) Does it ensure that farmers will continue to benefit from competition to develop, commercialize and sell cottonseed in the MidSouth and Southeast?, and (2) Does it preserve the likely benefits to competition that would have arisen from development of cottonseed for the MidSouth and Southeast containing non-Monsanto traits? The proposed remedy does both, as we explain in more detail below.

For some commentors, however, no remedy would suffice for this transaction or even any other potential acquisition of DPL. They essentially argue not only that the sole effective remedy in this case would be to block the transaction outright but that DPL must be kept as it is—independent of any trait provider—in perpetuity, available at any time for partnership with any trait provider that chooses to work with it.[27] This is a extraordinary proposition, and it is wrong. It relies on a static view of the market, presuming that DPL is essential to a competitive traited cottonseed market; it discounts the incentives and abilities of others, such as Bayer and Syngenta, to compete; it ignores market facts, such as Stoneville's efforts and growing success in the MidSouth and Southeast; and it would deny DPL and consumers the efficiencies that would come from vertical integration with a trait provider (evidenced by the significant number of seed companies that are vertically integrated into trait development).

In short, the remedy, when considered in light of the applicable legal standard and the appropriate inquiry, satisfies the public interest requirements set forth in the Tunney Act.

## IV. Response to Comments Criticizing the Sufficiency of the Remedy

Several commenters offer criticisms regarding the sufficiency of particular aspects of the remedy.[28] Before addressing these criticisms, it is important to note that the remedy should be evaluated as a whole. It is not necessary that each asset included within the remedy package, on a stand-alone basis, sufficiently preserves competition. Rather, the key determination is whether, as directed by the proposed Final Judgment, the entire remedy maintains competition for the development, commercialization and sale of traited cottonseed in the relevant markets. The remedy here accomplishes this goal by bringing together:

- An ongoing, historically successful cottonseed company, Stoneville, that has sold cottonseed in the MidSouth and Southeast since 1922, and in which Monsanto has recently invested heavily;
- Changes in Stoneville's trait licenses with Monsanto that give the purchaser of the Enhanced Stoneville Assets terms similar to those held by DPL;
- All of Monsanto's ongoing germplasm enhancement efforts that supported its internal predictions of substantial Stoneville market share growth over the next five years;
- Eight DPL elite conventional breeding lines that serve as the germplasm source for approximately 60% of DPL's sales in the MidSouth and Southeast;
- Twelve DPL elite conventional breeding lines that DPL anticipated would be the germplasm source for its next generation of traited seed in the MidSouth and Southeast;
- The requirement that the purchaser of the Enhanced Stoneville Assets be capable of and committed to using the assets to compete for traited cottonseed sales in the relevant markets;
- Divestiture to Syngenta of the VipCot development work to prevent any significant delay in bringing cottonseed with non-Monsanto traits to the marketplace; and
- Changes in Monsanto's trait license agreements with other cottonseed companies to allow them, without penalty, to stack non-Monsanto and Monsanto traits and to sell cottonseed that includes non-Monsanto traits.

This far-reaching remedy does not depend on the future success of each and every one of its components. Even if some component of the remedy were to fall short of expectations—e.g., one of the next-generation DPL lines fails to continue exhibiting the high performance characteristics that it has exhibited thus far—it would not jeopardize the efficacy of the remedy. Taken as a whole, there is no question that the remedy satisfies its goal of curing the competitive harms alleged in the Complaint. Nevertheless, we respond below to commentors' particular concerns.

*A. Divestiture of the Stoneville Business Unit and Monsanto Germplasm Provide the Acquirer a Firm Foundation on Which To Compete in the MidSouth and Southeast Markets*

Some commenters claim that Stoneville will not provide the acquirer of the Enhanced Stoneville Assets with an adequate foundation on which to compete against Monsanto/DPL.[29]

Stoneville, however, is an ongoing business, which has operated in the relevant markets for over 80 years and has significant capabilities and growth potential. It offers high quality germplasm and has a strong developmental pipeline. Its divestiture, coupled with additional cotton germplasm from Monsanto's breeding programs, will provide the principal acquirer—Bayer—a well-developed infrastructure and significant germplasm assets.

1. Stoneville Infrastructure

When Monsanto acquired Stoneville in 2005, Stoneville was a freestanding cottonseed company with a strong breeding program, as well as a national sales and marketing force. These existing assets had been sufficient to position Stoneville as a national provider of traited cottonseed—second only to DPL in the MidSouth and Southeast. As described above, Monsanto nonetheless took several steps to enhance Stoneville's breeding capabilities. With these investments, Stoneville is poised for significant growth, as reflected by Monsanto's internal projections.

DuPont nevertheless suggests that Stoneville's lack of viability as an

[26] See, *e.g.*, States Comments at 7 (''divested Stoneville is not the equivalent of DPL''); WFU Comment at I (proposed remedy ''does not even come close to replacing independent DPL'').

[27] See, e.g., States Comments at 7 (''[S]toneville has been divested to Bayer, a trait development competitor of Monsanto. Because of this, Stoneville can never duplicate DPL's unique position as an independent cotton seed company that can use its successful and high-quality germplasm to partner with several different biotech companies to develop viable competitive alternatives to Monsanto's monopolies in traits.''); OFU Comments at 1 (Enhanced Stoneville Assets do ''not take the place of an independent Delta and Pine Land'').

[28] See States Comments at 6–8; ICTA Comments at 6–8; AAI Comments at 8–16; DuPont Comments at 9–18; OFU Comments at 1; WFU Comments at 1; Texas Cotton Associations at 2; ICTA Comments at 1; Plains Justice Comments at 1; ISA Comments at 1; 0CM Comments at 2.

[29] See DuPont Comments at 6, 13 and 14; 0CM Comments at 2; States Comments at 4 and 7.

ongoing business is evidenced by trait developers choosing not to work with Stoneville between 1999 and 2005, when Stoneville was independent of Monsanto.[30] In making this argument, DuPont fails to note the fundamental reason why trait companies, including DuPont, chose not to work with Stoneville; namely, that under Stoneville's licenses with Monsanto at that time, Stoneville could not stack a non-Monsanto trait with a Monsanto trait.[31] Similarly, Stoneville was likely to be reluctant to provide a platform for an unproven trait because the terms of its Monsanto licenses became less lucrative if it worked with a non-Monsanto trait (e.g., it received a smaller share of the trait fee collected by Monsanto from farmers). In contrast, DPL could freely work with non-Monsanto traits, including stacking them with Monsanto traits, without risking reduction in its fee share or losing its Monsanto trait license altogether. The Enhanced Stoneville Assets include trait licenses from Monsanto that are comparable to those held by DPL pre-merger, and free of the restrictions that previously existed in Stoneville's licenses.

DuPont also claims that the divestiture is insufficient in that it does not provide the acquirer enough breeding stations, comparing DPL's eleven global breeding stations with Stoneville's two breeding stations.[32] That comparison, however, is misleading. Though DPL has eleven breeding stations worldwide, only five develop varieties for the MidSouth and Southeast. The divestiture includes the two breeding facilities that Stoneville used for developing MidSouth and Southeast varieties,[33] and Bayer has two additional breeding stations located in those regions, bringing Bayer's total to four after the divestiture. Accordingly, as a result of the sale of Enhanced Stoneville assets to Bayer, DPL–Monsanto and Bayer will have breeding infrastructures similar in size and scope focused upon developing varieties suited for the MidSouth and Southeast.

2. Monsanto/Stoneville Germplasm

The remedy provides the acquirer of the Enhanced Stoneville Assets all U.S. Stoneville cotton germplasm, as well as germplasm from Monsanto's Advanced Exotic Yield and Marker Assisted Breeding programs. For various reasons, commentors fail to understand the significance of these divestitures.

a. The Breeding Process

Much of the criticism results from lack of familiarity with the cottonseed breeding process. To address that deficiency, we provide below a short primer on cottonseed development.

There are two breeding stages in the development of quality, traited cottonseed. Breeders first develop elite conventional (nontraited) lines and, from those, they proceed to develop commercial traited varieties. In developing an elite conventional line, the breeder begins by crossing two elite lines that the breeder anticipates will produce quality offspring. The result of that cross will be many progeny plants with differing characteristics. The breeder then evaluates and selects some subset of the progeny as promising enough to continue in the breeding process. In the greenhouse, the breeder then self-pollinates the progeny plant (i.e., crosses the plant with itself), evaluates its progeny, and makes further selections. This process is typically repeated four times in the greenhouse as the breeder continues to make selections based on observable plant characteristics. Promising lines then are grown in the field and subjected to additional testing.

At the end of this process, which takes approximately six years, the finished line can take either or both of two paths. If the seed company intends to commercialize the line as a conventional variety, the company will subject the line to an additional year of field trials and then over the course of the next two years ''bulk'' the line up for commercial sale. If the seed company intends to use the finished line as a traited variety, the seed company will subject the line to a separate procedure. The finished line (the ''recurrent parent'') will first be crossed with a donor plant that contains the desired trait to introduce or ''introgress'' the trait into the recurrent parent line. After that initial cross, progeny plants are selected on the basis of agronomic characteristics and the presence of the trait. Those plants are then typically ''backcrossed'' with the recurrent parent, which involves pollinating the plants with pollen from the recurrent parent. Backcrossing brings the plant closer to the genetics of the recurrent parent, except that the trait is now present. Breeders typically backcross three to five times. Once the backcrossing is completed, the seed company puts the resulting traited seed through a period of increased testing and eventually bulking up for commercialization. Limited quantities of a traited variety from that recurrent parent will be commercially available approximately five years after the recurrent parent is available for breeding.[34]

b. Stoneville Germplasm

The proposed Final Judgment provides the acquirer of the Enhanced Stoneville Assets with all of Stoneville's U.S. germplasm.[35] DuPont, however, questions the likelihood that the varieties in Stoneville's development pipeline will be successful.[36] The evidence, however, shows the strength of the pipeline and, as Monsanto itself had predicted, its strong likelihood of commercial success.

Stoneville has over fifty lines in its pipeline for possible commercialization in the MidSouth and Southeast between 2008 and 2012. Stoneville's pipeline is the product of its traditional focus on mid- to full-season varieties found in the MidSouth as well as a more-recent sustained and intensive research effort to develop germplasm suitable for the Southeast.[37] Stoneville has historically been more successful at capturing sales in the MidSouth than in the Southeast (as evidenced by its 2006 share of 16% in the MidSouth versus 8% in the Southeast) because its breeding program had focused primarily on varieties

[30] DuPont Comments at 15.

[31] DuPont further suggests that Stoneville's inferiority as a trait partner is evidenced by Monsanto choosing to purchase DPL. DuPont overlooks the important fact that DPL had a pending lawsuit against Monsanto under which Monsanto faced a potential $2 billion liability. By purchasing DPL, Monsanto eliminated that liability. Although not a merger-specific efficiency, eliminating this potential liability provides an explanation for Monsanto's decision to undertake the acquisition. Monsanto's desire to resolve that litigation also contradicts ISA's assertion that ''the clear reason for Monsanto's acquisition of Delta is elimination of competition in seeds.'' ISA Comments at 1.

[32] DuPont Comments at 15; see also States Comments at 3.

[33] Monsanto also used facilities in Georgia and North Carolina in part for cottonseed development. Because Monsanto used those facilities for development of several crops besides cotton, and Monsanto included in the Enhanced Stoneville Assets the cottonseed-related tangible assets kept at those sites, the United States did not require divestiture of the real property supporting those facilities.

[34] Breeding a traited variety from elite parents can take as little as four years or as long as seven. The seven year outer time frame can be reduced by several means, including: using counter-seasonal breeding; using molecular markers to reduce the number of crosses used in introgression and increase stages; using high quality germplasm as the trait donor, in the case of creating a stacked variety, using a trait donor that contains both of the desired traits; limiting the number of official variety trials prior to making the seed available for sale; and bringing a more limited volume of seed to market in the launch year.

[35] As discussed above, this includes all germplasm with the exception of the NexGen varieties Americot acquired.

[36] DuPont Comments at 9–10.

[37] Full-season varieties typically perform better in the Southeast than the early- to mid-season varieties that excel in the MidSouth.

harvestable early in the growing season. When Emergent Genetics (''Emergent'') acquired Stoneville in 1999, however, it saw the Southeast as a lucrative growth area and began taking steps to increase Stoneville's efforts to breed mid- to full-season varieties (i.e., varieties better suited to the longer growing season afforded in the more southern growing areas). To this end, in 2001 Emergent acquired Helena Chemical's breeding program, which included germplasm lines suited for the Southeast. In addition, Emergent established a breeding station in Arizona with the specific mission of breeding mid- and full-season varieties.

When Monsanto acquired Stoneville in 2005, it continued these efforts to breed varieties suitable for the Southeast, significantly increasing the number of testing plots and aggressively using counter-season production to accelerate the introduction of full-season varieties. According to Monsanto's internal field tests, conducted prior to entering the agreement to acquire DPL, several of Stoneville's lines are performing in yield trials on par with DPL's most successful varieties in the MidSouth and Southeast, DP555 and DP444. Indeed, Monsanto anticipated that its efforts to improve Stoneville's breeding program would result in Stoneville gradually increasing its national share from 13% in 2006 to nearly 20% by 2010 (this estimate did not include the likely share increases that would stem from germplasm being developed by Monsanto outside of Stoneville that the proposed Final Judgment also requires to be divested).[38]

c. Additional Monsanto Germplasm

The proposed Final Judgment also requires Monsanto to divest cotton lines from its valuable internal research and development efforts—the Advanced Exotic Yield lines and the Marker Assisted Breeding (''MAB'') populations—regardless of whether Monsanto considered those lines to be part of Stoneville. In this way, the remedy ensures that the acquirer has the breadth of Monsanto's cottonseed development programs that would have been used to compete against DPL absent the transaction.

i. Advanced Exotic Yield Lines

DuPont implicitly criticizes the inclusion of the Advanced Exotic Yield Lines in the divestiture package, suggesting that because the CIS describes the value of these developmental lines as ''promising,'' the lines likely will be of little commercial value to the acquirer of the Enhanced Stoneville Assets.[39] Although Monsanto started its Advanced Exotic Yield program as a means of identifying traits in exotic cotton plants that would increase yields when bred into more traditional commercial lines, that program also resulted in the creation of finished elite lines that have achieved significantly better yields in field tests than the current leading varieties in the MidSouth and Southeast. As noted in the CIS, Monsanto planned to bring the first traited varieties from these lines to market by 2009. Monsanto forecasted that these traited varieties would be a significant driver of market share for Stoneville.[40]

AAI suggests that the acquirer will have little incentive to commercialize these varieties because they contain Monsanto traits. The comment offers no explanation of why the acquirer would forgo a significant profit opportunity by abandoning germplasm that appears to have significant advantages relative to competing germplasm that also contains Monsanto traits. In any case, Bayer has already publicly touted its acquisition of the Enhanced Stoneville Assets as including ''access to additional high performing cotton products with insect-resistant and herbicide-tolerant Monsanto traits.''[41]

AAI also contends that many of the Advanced Exotic Yield Lines ''are of extremely limited value to the acquirer'' because they already contain Monsanto traits and ''[b]reeding out Monsanto traits and then breeding in competing traits will take a long time.''[42] AAI's criticism, however, reflects a misunderstanding of the value of the lines and the various methods by which the acquirer can use them. In the near term, the acquirer can commercialize varieties from the Advanced Exotic Yield Lines that currently contain Monsanto traits. Sales of such varieties likely would be important for the acquirer in growing Stoneville's market share. In the medium and longer terms, the acquirer can use the lines as breeding stock to introduce varieties containing, in whole or in part, non-Monsanto traits. It can do this by two different methods. First, it could simultaneously breed out any Monsanto traits that are not desired while breeding in new traits. Under this method, it could use any of the lines, including the four recurrent parents,[43] as a parent in crosses that ultimately result in commercial varieties containing the desired traits, including varieties containing only non-Monsanto traits. Such a process could be carried out within the five year time horizon during which DPL anticipated it could bring non-Monsanto traited seed to market.[44] Under the second method, which would take additional time, the acquirer could breed out the Monsanto traits to make new conventional lines[45] and then use those conventional lines as breeding stock to launch varieties containing non-Monsanto traits.

Commenters' concerns regarding the rights retained by Monsanto to the Advanced Exotic Yield Lines also lack merit.[46] The rights retained by Monsanto to these lines merely allow Monsanto to continue a trait research program that, if successful in identifying a yield trait that could be introgressed into cotton varieties, would significantly benefit cotton farmers. Moreover, the proposed Final Judgment makes clear that, whether or not its research program is successful, Monsanto cannot encumber in any way the acquirer's use of the Advanced Exotic Yield Lines.

ii. MAB Populations

AAI and DuPont question the value of the MAB lines to the acquirer of the Enhanced Stoneville Assets, pointing to language in the CIS which states that

[38] DuPont notes that Stoneville's share in the Southeast and MidSouth has been in decline as evidence that its potential to compete in the future is not bright. DuPont Comments at 14. However, because Emergent's and Monsanto's investments in Stoneville's breeding capabilities are so recent, Stoneville's share declines do not accurately reflect Stoneville's potential. In 2007, Stoneville reversed the trend of declining share. According to USDA's annual reports on cotton varieties planted, Stoneville's breeding efforts are, as Monsanto predicted, beginning to produce results. From 2006 to 2007, Stoneville's share increased from approximately 13% to 15% nationwide and from just over 8% to 11% in the Southeast.

[39] DuPont Comments at 11 and 15.

[40] Despite their origin in a trait research program, further breeding and commercialization of these lines requires only traditional breeding techniques.

[41] Bayer, Investor Handout, Q2 2007, *http://www.investor.bayer.de/user_upload/2747/*.

[42] AAI Comments at 13.

[43] One of the recurrent parents is a conventional line and can be used immediately for breeding a variety that contains only non-Monsanto traits. The other three recurrent parents were originally created by crossing a variety containing Bollgard with an exotic variety and those parents accordingly contain the Bollgard I trait. If Bayer chooses, it can use these three parents immediately to breed varieties that contain a stack of a non-Monsanto herbicide trait and Bollgard II (breeding in Bollgard II does not require breeding out Bollgard I).

[44] Under this method, a breeder would cross an Advance Exotic Yield Line containing Monsanto traits with a line that contains non-Monsanto traits. The breeder can then select from the progeny offspring that lack the Monsanto traits and advance those offspring through traditional breeding methods to create the desired variety.

[45] Breeders can create a finished conventional line by crossing an Advanced Exotic Yield Line containing Monsanto traits with a conventional line and then selecting progeny that lack traits for further breeding.

[46] See ICTA Comments at 7; AAI Comments at 9.

some of the MAB lines contain Monsanto's traits.[47] In essence, such comments suggest that the Enhanced Stoneville Assets divestiture is only effective as a remedy to the extent the divestiture gives the acquirer access to conventional cotton lines. Since the acquirer would need to breed Monsanto's traits out of some of the MAB lines to create non-Monsanto traited lines, the commenters conclude that the competitive value of the MAB lines to the acquirer is limited in the near term and at most questionable in the longer term. That conclusion is incorrect.

Monsanto's MAB cotton program involved identifying genetic markers for important agronomic characteristics in the progeny resulting from the cross of two elite lines. The goal of the MAB program was two-fold. First, breeders could use these markers to make better informed selections from the progeny plants and could thereby produce a variety that likely was agronomically superior to, and bred more quickly than, a variety derived from traditional breeding selection methods. Monsanto anticipated that commercial varieties from the MAB program would become available as early as 2012. Second, and in the longer term, a large library of such genotypic information would offer breeders the ability to make better decisions about what elite varieties to cross in the first instance. Accordingly, divesting the MAB populations and the accompanying molecular mapping data provides the acquirer of the Enhanced Stoneville Assets with germplasm and genetic information that will enhance its offerings over the medium term and provide a significant informational foundation for successful competition over the longer term.

With respect to the specific concern that the MAB populations are of little value to the acquirer because some contain Monsanto traits, the AAI overstates the scope of the limitation articulated in the CIS. While many of the MAB populations are based on a cross involving a parent that contains a Monsanto trait, approximately 37% of them are not. Moreover, as explained above, the time line for creating and commercializing conventional versions from lines containing Monsanto traits, or creating versions containing traits other than Monsanto's, is approximately five years.

*B. Additional DPL Germplasm Provides Important and Meaningful Value*

Given the growth projections in Monsanto's business documents, the Stoneville germplasm combined with the Monsanto Advanced Exotic Yield and MAB cottonseed lines arguably would be sufficient to enable the acquirer of the Enhanced Stoneville Assets to compete effectively against DPL cottonseed. However, the proposed Final Judgment seeks to further ensure effective competition by supplementing the Monsanto assets with certain key DPL germplasm lines consisting of 20 lines representing the pedigrees of many of DPL's popular current varieties in the MidSouth and Southeast as well as a significant portion of DPL's breeding pipeline for these areas. Commenters had several concerns regarding these 20 lines,[48] which we address below.

1. The DPL Germplasm Is of High Quality

Some commenters question whether the 20 DPL lines will produce competitive traited varieties.[49] The United States used two methods to select the 20 lines, both of which were designed to identify the lines that had the greatest chance of commercial success in the MidSouth and the Southeast. First, the United States looked to the germplasm in the pedigrees of the DPL varieties currently performing best in the MidSouth and Southeast (based on total sales). The eight divested DPL lines that fall into this germplasm category[50] are prevalent in the pedigrees of the DPL varieties most successful in the MidSouth and Southeast today; five of these lines[51] are the recurrent parents of the DPL varieties accounting for about 60% of DPL's 2006 cottonseed sales in the Southeast—the growing region where DPL holds the greatest share advantage.[52] Any of these lines could be used immediately as a recurrent parent for a traited variety, as well as for breeding stock for developing new elite lines.

Second, the United States examined what germplasm DPL was counting on for its future seed sales, recognizing that breeding programs are not static. Thus, the other twelve DPL lines included in the divestiture package—even though not currently offered for sale or found in the pedigrees of current bestsellers—were selected because DPL gave them the highest rating of the select group of lines that it had in the pipeline for trait introduction in its MidSouth and Southeast breeding programs.[53] DPL had in fact already introgressed Syngenta's VipCot trait—the foundation of DPL's effort to move away from Monsanto—into these lines, revealing DPL's confidence that they were most likely to produce high yielding varieties suitable for the MidSouth and Southeast.[54] These lines would likely have been the source for any non-Monsanto traited varieties that DPL would have brought to market in the MidSouth and Southeast from 2012 to 2016. Because these lines are finished elite lines, any competent breeder (such as the breeding personnel at Stoneville and Bayer) could have traited versions of any of these lines ready for commercialization within approximately the next five years, *i.e.*, within the same time frame that DPL could bring a non-Monsanto herbicide-tolerant seed to market.[55]

Finally, some commenters opine that the mere fact that this germplasm has not yet been tested in the marketplace

[47] AAI Comments at 13; DuPont Comments at 11.

[48] See AAI Comments at 12; DuPont Comments at 12; and OCM Comments at 3.

[49] For example, DuPont raises questions about the process used in selecting these 20 lines. DuPont Comments at 12. The AAI suggests that the chances of the government picking good varieties is low. AAI Comments at 13.

[50] Lines DP 5690, DP 491, DP 2156, DP 565, DP 5305, DP 5415, and Delta Pearl.

[51] Lines AZ2099, DP 491, DP 565, DP 415, and Delta Pearl. Delta Pearl is the recurrent parent of DPL's wildly successful DP 555 BGIRR (which accounted for over 18% of all U.S. cottonseed sales in 2007 and over 80% of total cottonseed sales in the Southeast in 2007). Dupont notes ''the CIS does not disclose how many other DPL germplasm lines are represented in the lineage of these currently popular varieties.'' DuPont Comments at 12. No other DPL germplasm lines are represented in the lineage of the traited varieties derived from these five lines.

[52] OCM's and AAI's representation that these eight lines reflect only 1% of cotton acreage is based only on their share of sales when offered as conventional commercial varieties. OCM Comments at 3; AAI Comments at 12. However, the relevant statistic is the one cited above and in the CIS; namely, the role these lines have had in fostering DPL's current share of traited varieties in the MidSouth and Southeast.

[53] The United States's investigation revealed that over the past several years DPL's breeders have established a four-tier system for ranking the potential of germplasm the breeders have under development. From 2004 (when DPL set up the rating system) to 2007, only fifteen lines across DPL's five MidSouth and Southeast oriented breeding stations received DPL's highest internal ranking. The ranks assigned by DPL reflect the results of extensive field testing. Under the proposed Final Judgment, twelve of those lines will go to the acquirer of the Enhanced Stoneville Assets.

[54] Similarly, in 2006 DPL attempted to introduce potential OptimumGat events into seven DPL lines, hoping by that process to create a plant in which OptimumGat successfully imparted herbicide tolerance. While that attempt by DPL and DuPont failed to produce any potential candidates for use as an OptimumGat donor parent, the fact that all seven of the lines used in that experiment are among the twelve divested further demonstrates the high regard DPL had for these lines.

[55] Thus, AAI's criticism (p. 12) that the ''acquirer is therefore obtaining only the raw inputs necessary to breed varieties that could be commercially viable in the future and only after considerable expenditure'' is incorrect.

inherently diminishes its value.[56] As discussed above, the divested material is hardly of unpredictable quality. The twelve lines of DPL germplasm were selected precisely because those lines' superior performance had already been observed and relied upon by DPL's breeders.[57] DPL was developing the next generation of germplasm that it planned to use in connection with marketing non-Monsanto traits. Divestiture of this germplasm will allow the acquirer to continue these efforts and not rely solely on currently available material.

2. The Acquirer Will Be Able To Use This Germplasm Effectively

Some commenters suggest that it will take the acquirer anywhere from eight to fifteen years to commercialize traited varieties from these 20 lines.[58] To fact, it should take far less time. Because all 20 of the DPL lines in the Enhanced Stoneville Assets are finished elite conventional lines, they can be immediately used as a recurrent parent for a cross with a trait donor. Assuming competing traits are available to breed into them, traited varieties from these lines could reach the market in approximately five years—the same general time frame in which DPL could have introduced non-Monsanto traited varieties absent the merger.[59]

Contrary to DuPont's suggestion,[60] the acquirer of the Enhanced Stoneville Assets will not be at a disadvantage with respect to effectively using the DPL germplasm lines included in the package. The proposed Final Judgment specifically provides that the acquirer will receive applicable performance data and other information.[61] Such information transfers are a routine practice in the seed industry when germplasm or seed companies are bought or sold (which also occurs routinely)—the books, logs, and other documentation about a breeding line are transferred with the line even if the breeder does not go to the new owner of the line. These materials will readily allow the Stoneville breeders to understand the work that has been done on these lines to date and to move the lines forward in their breeding program.[62]

The States also contend that ''even post-acquisition, Monsanto retains the right to * * * preclude [the acquirer of the divested DPL lines from us[ing] them with non-Monsanto cotton biotech traits.'' States Comments at 7. Under the proposed Final Judgment, the acquirer of the DPL lines can freely use them to create varieties that contain (a) solely non-Monsanto traits, (b) Monsanto's Bollgard II and non-Monsanto herbicide tolerant traits, and (c) Monsanto's Flex, non-Monsanto insect resistant traits and non-Monsanto herbicide tolerant traits. The only limitation regarding use of non-Monsanto traits is that for a period of seven years the acquirer cannot commercialize varieties from the DPL lines that solely have Bollgard II, Flex and a non-glyphosate cotton herbicide tolerant trait currently commercialized in cotton. The only non-glyphosate cotton herbicide tolerant trait currently commercialized in cotton is Bayer's Liberty Link. This limitation adds to Bayer's incentive to introduce a non-Monsanto glyphosate tolerant cotton trait as a substitute for Monsanto's Flex.

3. Monsanto/DPL's Use of the Germplasm Does Not Diminish Its Value to the Acquirer and Provides Farmers Continued Benefits

Some commenters claim that the fact that Monsanto retained the right to continue working with the DPL lines, so long as the commercialized variety contains Monsanto-only traits, means that these lines have little value to the acquirer[63] and provides Monsanto an improper benefit.[64] First, to the extent that the DPL germplasm provides the acquirer of the Enhanced Stoneville Assets with a variety that has strong agronomic characteristics, the acquirer will have every incentive to market that product. Indeed, rather than being reason for concern, Monsanto's desire to retain rights to these lines is further indication of the value of this germplasm within DPL's breeding program.

Second, the licensing back of the lines to Monsanto/DPL benefits cotton farmers. For example, if Monsanto did not have a license for the to-be-divested DPL lines that are recurrent parents to existing DPL traited varieties (including DP555, which contains Monsanto's traits), Monsanto would have to remove these varieties from the market, significantly limiting options for cotton farmers. Similarly, without such a license, Monsanto would have to discard any varieties in DPL's developmental pipeline that have the divested lines as a recurrent parent, even if those lines already contain only Monsanto's traits. The commenters do not explain why competition would be served by denying cotton farmers these varieties.[65]

*C. The Remedy Preserves Incentives and Opportunities for Effective Traited Cottonseed and Trait Development Competition*

Commentors expressed concern about the opportunities for trait developers. Those concerns, however, are misplaced as discussed below.

1. Syngenta Will be Able to Effectively Use the VipCot Assets

Some commenters[66] express concern that certain provisions of the license

[56] See, e.g., ICTA Comments at 7 (''Twelve of the 20 lines are experimental lines with unproven and hence uncertain commercial potential.'').

[57] In further support of its claim that 20 lines are insufficient, DuPont claims that ''DPL introduced 64 unique cotton varieties in the past eight years, but only 14 ever came to represent 1% or more of annual U.S. cottonseed acres.'' DuPont Comments at 16. The statistic, however, is misleading. One elite breeding line can result in multiple unique varieties in two independent ways: varieties with the same recurrent parent can be differentiated based on their trait composition; additionally, the process of introgressing a trait into a conventional elite parent may yield multiple promising and distinctive progeny that have commercial potential. For example, Delta Pearl is the recurrent parent of five traited varieties introduced by DPL between 2000 and 2006 as well as being offered as a conventional variety. Similarly, DP491 is the recurrent parent of four traited varieties as well as being offered as a conventional variety. Thus, divesting 20 lines provides the potential for many more than 20 commercial varieties.

[58] Several commenters, citing provisions in the Complaint (¶ 15) and the CIS (at p. 16), provide time frames ranging from eight to fifteen years for how long it would take the acquirer to bring traited varieties of the DPL germplasm to market. E.g., States Comments at 6 (8–10 years); AAI Comments at 12 (10 years); and OCM Comments at 2 (8–15 years).

[59] Commenters ignore the fact that DPL has already completed the bulk of the breeding process on the divested lines (*i.e.*, the first six or seven years of making crosses and winnowing progeny). Commenters' citations to the Complaint and CIS are thus inapplicable. See Complaint ¶ 15 (referring to the time period for bringing a new variety to market from an initial cross of two cotton lines—the divested lines are well past that stage) and CIS at 16 (referring to DPL using the divested lines to bring varieties to market ''over'' the course of the next decade, not, as AAI suggests, for at least another ten years).

[60] DuPont Comments at 13.

[61] See proposed Final Judgment Schedule B, Section 2.

[62] Bayer has already received this information from DPL in conjunction with the divestiture of the 20 DPL lines.

[63] States Comments at 7 (''even post-acquisition, Monsanto retains the right to sell the most popular seeds from those lines''); OAG at 3 (20 lines ''is not even a true divestiture''); DuPont Comments at 13 (divestiture of DPL germplasm is non-exclusive).

[64] ICTA Comments at 7; see also AAI Comments at 10; DuPont Comments at 13.

[65] ICTA's concern about the provision allowing DPL to sell conventional versions of the DPL divested lines is also misplaced. ICTA Comments at 4 (''DoJ has absolutely no basis for proposing, or assessing the adequacy of the remedy cited above''). At the time the Complaint was filed, the 2007 seed purchasing season was already under way and DPL was selling some of the divested lines as conventional varieties. Thus, the provision permitting DPL to continue to sell these varieties in 2007 merely avoided disruption to farmers who wanted to buy these conventional varieties for that season.

[66] See e.g., ICTA Comments at 7–8; AAI Comments at 10.

agreements accompanying the divestiture of the VipCot Assets will unnecessarily restrict Syngenta's use of the assets.[67]

As noted above, the development of Syngenta's VipCot trait in DPL seed was at an advanced stage when Monsanto's acquisition of DPL was proposed. The United States required the divestiture of the most advanced of DPL's VipCot lines not to ensure that Syngenta could replace Stoneville as a competitor against DPL the Enhanced Stoneville Assets divestiture addresses that harm but to prevent any delay to VipCot's commercialization as a result of the merger. The terms of the proposed Final Judgment will provide Syngenta the rights it needs to bring VipCot to market and, thus, fulfill the goal that the VipCot Assets divestiture is intended to accomplish.

As provided in the proposed Final Judgment, the divestiture of these 43 lines to Syngenta offers several possible paths to market for this traited germplasm.[68] Syngenta could start its own seed company using this germplasm as a base either on its own or via a joint venture—and make sales of the traited seed directly to distributors or farmers. Syngenta already operates soy and corn seed companies in the United States and is one of the largest providers of cotton-related herbicides and insecticides in the world. Syngenta also is a partner with DuPont in a recently formed joint venture called Greenleaf Genetics, which the companies established to out-license the companies' proprietary corn and soybean genetics and biotechnology. In addition, Syngenta has the option of licensing the traited germplasm to other seed companies, such as Bayer, Dow and Americot, which already have breeding and distribution programs in place.[69]

The requirement in the proposed Final Judgment that a commercialized variety derived from the VipCot Assets contain one of four listed Syngenta insect-resistant events is not unduly restrictive.[70] These are the four ''versions'' of the insect-resistant trait that Syngenta and DPL were most confident could achieve commercial success in the near-to-medium-term. This restriction, therefore, is directly tied to the harm that divesting the VipCot Assets is designed to remedy; namely, delay in the introduction of the VipCot traits that DPL and Syngenta had been positioning to enter the market.[71] It is unlikely that any new insect-resistant traits developed by Syngenta other than VipCot would be available for more than a decade, and any such trait likely could in any event be stacked with one of the four existing events consistent with the proposed Final Judgment.

2. The Remedy Will Preserve Opportunities for Trait Developers to Market Nonmonsanto Traits In Competitive Cottonseed

Some commenters expressed concern that post-merger there will no longer be a sufficient base of non-Monsanto controlled cottonseed to support future trait development.[72] However, the Enhanced Stoneville Assets divestiture provided for in the proposed Final Judgment establishes a substantial future platform for cotton trait developers to use to reach farmers in the MidSouth and Southeast.

In addition, the third party license changes required by the proposed Final Judgment promote the development and commercialization of competitive cottonseed with non-Monsanto traits by giving cottonseed companies the ability to partner with trait developers other than Monsanto without any financial penalty. Currently, DPL seed accounts for approximately 43 percent of U.S. cottonseed acres, leaving over half of all U.S. cottonseed acres available to trait developers who seek to compete against the merged Monsanto/DPL. Commenters fail to explain why this amount of acreage is insufficient, especially given the additional returns on investment in cotton trait research that could be gained from Stoneville's likely growth in the MidSouth and Southeast, possible cross-crop trait applications, and international cottonseed markets.

With regard to the license changes, AAI suggests that Monsanto's trait licensing practices should be addressed in a separate case, claiming that the required licensing modifications do not help to remedy the loss of competition alleged in the Complaint.[73] To the contrary, the modifications specifically address competition lost from Monsanto's acquisition of DPL, since DPL's licenses did not limit its ability and incentive to work with non-Monsanto trait providers.[74] These trait providers will now be able to work with cottonseed companies who previously had restricted licenses.

3. The Remedy Should Not—and Does Not—Guarantee the Introduction of DuPont's OptimumGat Trait

Several commenters express concern that the remedy is insufficient because it does not ensure that DuPont's OptimumGat trait will reach the market.[75] As discussed above, the proposed remedy preserves the potential for the development and introduction of competing herbicide-tolerant traits in the MidSouth and Southeast. OptimumGat may prove to be such a trait, but there was never any certainty of that even without the merger.[76] Indeed, DPL was itself exploring herbicide-tolerant trait alternatives with developers other than DuPont. For example, Bayer and Syngenta independently have been working on herbicide-tolerant traits for cotton that could be commercialized on or before the time when DPL could have brought OptimumGat to market absent the merger. Thus, there was never any guarantee that OptimumGat would ultimately be commercialized in cotton even if DuPont were able to continue working with an independent DPL,[77] and it would be inappropriate for an antitrust remedy to establish a guarantee that the market would not have provided.

[67] The proposed Final Judgment requires Monsanto to divest to Syngenta 43 advanced DPL germplasm lines traited with VipCot and related assets necessary to bring varieties from these lines to market.

[68] The United States has worked with Monsanto and Syngenta to ensure that the divestiture (including access to any required licenses) is accomplished under terms that do not restrict Syngenta's competitiveness and are commercially reasonable.

[69] Of course, Syngenta also could license just the VipCot trait to seed companies if the DPL-traited germplasm is not attractive to potential licensees or if Syngenta wished to keep the DPL germplasm for its own branded seed product.

[70] See AAI Comments at 10.

[71] Contrary to the apparent perception of some commentors (see, e.g., ICTA Comments at 8), this aspect of the proposed Final Judgment is not designed to ensure, by itself, an adequate platform of high-quality germplasm for future trait developers. The limitations on Syngenta's use of the germplasm are appropriate to match this aspect of the remedy to its more-narrow objective preventing the merger from delaying VipCot's commercialization—and unrestricted access to this germplasm is unnecessary in light of the other elements of the proposed Final Judgment.

[72] See, e.g., OFU Comments at I (''competing seed trait developers will have great difficulty gaining access to the market''); OCM Comments at 3.

[73] AAI Comments at 15.

[74] In requiring these changes, the United States made no determination as to whether any provisions in Monsanto's licenses violated the antitrust laws.

[75] See, e.g, DuPont Comments at 2 (DuPont terminating research and development for OptimumGat in cotton); States Comments at 4 (claiming that ''because of DeltaMax's termination, Monsanto's cotton herbicide-tolerant trait dominance is assured for the foreseeable future'').

[76] As noted above (supra p. 5), development efforts for introducing OptimumGat in DPL germplasm were at a preliminary stage.

[77] See DPL 2006 Form 10K.

4. The Remedy Will Preserve the Number of ''Platforms'' for Trait Development That Existed Pre-Merger

Commenters suggest that because Bayer itself develops traits it will not work with other trait developers and that the remedy thus fails to preserve trait development opportunities.[78] Even if the claim were true, the competitive harm identified in the Complaint is still addressed: pre-merger, farmers in the MidSouth and Southeast looked forward to a choice between Stoneville/Monsanto and DPL/non-Monsanto traited cottonseed; post-merger they still will have a choice as they will look forward to competition between Stoneville/Bayer and DPL/Monsanto.

It is important to bear in mind that DPL itself might not have continued to work with multiple competing trait developers. Contemporaneous DPL business documents indicate that DPL likely would have selected only one non-Monsanto stack to bring to market in light of the costs associated with breeding traited varieties, commercially distributing multiple varieties, and managing the requirements and earning potentials of licences with trait developers. Thus, DPL likely would have chosen only *one* non-Monsanto insect-resistant trait and one non-Monsanto herbicide-tolerant trait to promote. It is also likely that DPL would have continued offering a Monsanto stack because of the apparent market demand for Monsanto's traits.[79]

In any event, Bayer has very strong incentives to use other third-party traits if those traits are better than the traits it can develop on its own. Indeed, Monsanto will have the same incentive. Competition from one will spur the other to try to offer the best product, regardless of whether the included trait is developed in-house or licensed from a third-party.[80] (And, it bears remembering, such development of traits is, and would have been absent the merger, likely to occur nearly a decade in the future.)

## V. Response to Comments That the Remedy Is Not Workable

A number of commenters posit that the remedy provided for in the proposed Final Judgment is not in the public interest because the remedy is ''conduct-based''[81] as opposed to ''structural,'' and because the required divestitures have ''strings attached,'' such as licenses running between Monsanto and the acquirers of the divested assets. These commenters further assert that these provisions essentially render the remedy too costly to administer, or will require too much ongoing involvement and policing by the United States or the Court to be effective. As explained below, the proposed Final Judgment provides an effective remedy that is clean and certain (i.e., consisting of one-time, well-defined events that do not involve costly government regulation of the market), is consistent with the Merger Remedy Guide issued by the United States,[82] and does not involve cumbersome monitoring by the United States or the Court.

### *A. The Divestitures and License Changes Are One-Time Events, Not Ongoing Behavioral Remedies*

The remedies proposed by the United States are one-time events calling for the divestiture of identifiable and transferable assets and intellectual property as well as modifications to certain licenses. These are not conduct remedies that involve ongoing entanglement in market operations or regulation of Monsanto's ongoing conduct.[83]

Specifically, the proposed Final Judgment calls for the divestiture of Stoneville, an ongoing cottonseed business that has been bought and sold on several occasions, including all of Stoneville's domestic germplasm, breeding, and sales and marketing assets, together with the information and intellectual property necessary to use those physical assets. In addition to the Stoneville business unit, the remedy calls for the divestiture of additional complementary assets, i.e., the 20 DPL cotton germplasm lines.[84] The transfer of this package of assets is a one-time event that constitutes a workable remedy to preserve competition and provides clear lines of ownership, with Bayer owning outright the Stoneville business, as well as the 20 lines formerly belonging to DPL. In its basic structure, this remedy is not different from the commercial transfer and licensing of germplasm and related intellectual property that occurs routinely in the marketplace.

Some commenters suggest that aspects of the remedy involving licensing arrangements are unworkable conduct remedies that are inconsistent with the United States's policies on merger remedies.[85] The United States's Merger Remedy Guide, however, explains that proper merger remedies can ''involve the sale of physical assets'' as well as the ''sale or licensing of intellectual property.''[86] Licensing is routine in this industry, where companies often combine the work of others (e.g., germplasm, traits, intellectual property) with their own useful developments and introduce better products for the market. The licenses in this case were crafted so that each company would know which rights it would retain after the divestiture to help ensure a workable remedy.

The divestiture of the VipCot Assets to Syngenta is also a workable remedy. The germplasm divestiture is accomplished though a license to Syngenta rather than absolute ownership, but the method of transfer will not affect Syngenta's ability to compete effectively as Syngenta will have a non-terminable and royalty-free license to use the divested lines.[87] As discussed above, the provisions in the proposed Final Judgment offer Syngenta several alternatives for bringing the DPL germplasm to market, and entry of VipCot-traited varieties will alter the structure of the traited cottonseed market regardless of the means selected.

Finally, the proposed Final Judgment's requirement that Monsanto modify existing third party licenses is also a one-time event. The changes to these licenses require modification of certain terms that will enable those third parties to work more readily with non-Monsanto trait providers.

### *B. Monitoring Compliance With the Remedy Will Not Unduly Burden the United States or the Court*

Contrary to some commenters' suggestions, the terms of the proposed Final Judgment do not require cumbersome monitoring of the

[78] States Comments at 7.

[79] DPL's agreements with Syngenta and DuPont did not require exclusivity, and future market conditions (especially demand by farmers for Monsanto's proven traits) might have dictated that DPL continue offering Monsanto traits. Internal DPL business documents suggest that it planned to follow this course.

[80] Recognizing this dynamic, third-party trait developers will have incentives to continue research efforts.

[81] See e.g., AAI Comments at 9–10; CFS Comments at 7–9; DuPont Comments at 13–14; States Comment at 7.

[82] See U.S. Dep't. of Justice, Antitrust Div., Antitrust Division Policy Guide to Merger Remedies, (October 2004), available at *http://www.usdoj.gov/atr/public/guidelines/205108.pdf* (hereinafter ''Merger Remedy Guide'').

[83] See Merger Remedy Guide at 7–12 (describing the differences between structural and conduct remedies).

[84] The Merger Remedy Guide recognizes that there may be instances when ''additional assets from the merging firms will need to be included in the divestiture package.'' Merger Remedy Guide at 12.

[85] ICTA Comments at 6–8; AAI Comments at 9.

[86] Merger Remedy Guide at 7.

[87] Merger Remedy Guide at 15 n.22 (describing requirements that the Division typically imposes on structural remedies involving licensing).

marketplace by the United States or the Court.[88] For example, pointing to certain conditions and limitations placed on the germplasm to be divested under the proposed Final Judgment, AAI asserts that the divestitures are a ''conduct-based, regulatory-style 'fix' that imposes on this Court a monitoring and compliance burden that it should be loathe to undertake.'' [89] These criticisms grossly overstate monitoring issues associated with the proposed Final Judgment.

As stated above, the asset divestitures and license modifications are one-time events that, in fact, have already been accomplished in their entirety or have been implemented successfully in significant part. There remains, of course, the possibility that a dispute under one of the asset purchase agreements or licenses will arise in the future. Such a possibility exists in nearly every case in which the United States requires divestitures. As a general matter, such disputes would not require intervention by the United States, as the parties to the dispute can rely on contract procedures and other remedial steps to reach a resolution. Accordingly, while the United States will continue to monitor Monsanto's behavior to ensure compliance with the judgment, the prospect of the United States and this Court becoming enmeshed in the types of disputes enumerated by the commenters is both exaggerated and remote.

## VI. Response to Comments That Raise Issues Beyond the Scope of the Court's Review

Several commenters express concerns about competitive issues not raised in the Complaint. As discussed above in Section III.A., issues beyond the scope of the Complaint are outside the purview of the Court. However, even if the Court were to consider the merits of these alleged concerns, the United States appropriately concluded that permitting the transaction will not give rise to the posited harms.

### *A. Crops Other Than Cotton*

Several commenters expressed concern that the merger will have a detrimental impact on the development of traits for corn and soy.[90] These commenters argue that a reduced revenue opportunity in cotton will make trait producers hesitant to develop traits as they will have fewer opportunities to profit from their investment. Market conditions belie that prediction.

The revenue opportunities for corn and soy traits far exceed those for cotton, based on available acres. The market for biotech soy is more than four times greater than the market for biotech cotton in the United States, and more than three times greater worldwide. The market for biotech corn is at least four times greater than that for cotton in the United States, and at least 1.3 times greater than that for cotton worldwide. Within the United States, the combined market opportunity to sell biotech soy and biotech corn is roughly 130 million acres, whereas there are only 15 million cotton acres.[91] That revenue opportunity has proven sufficient for DuPont to continue its commercialization of OptimumGat in corn and soy and to continue research and development of other transgenic traits [92] and likely would provide similar incentives for other trait developers.

### *B. Conventional Cottonseed*

ICTA suggests that the transaction will result in harm to a conventional cottonseed market.[93] The merger does not, however, substantially alter incentives of seed companies to offer conventional varieties. Absent the merger, DPL's share of the trait fee charged by Monsanto reflected a significant share of DPL's revenues, and DPL's revenues from trait fees would have become even larger as it shifted to non-Monsanto traits. Accordingly, even without the merger, DPL would have had substantial incentives to shift sales from conventional to traited seed so as to earn these fees. Further, ICTA fails to explain why, assuming there is a core set of farmers committed to using conventional seed, Monsanto or Bayer would not continue to have sufficient incentives to provide conventional seed to them.[94]

### *C. The Southwest and West Traited Cottonseed Markets*

ICTA contends that the transaction will harm competition for traited cottonseed in the Southwest and West regions of the United States. A close examination of the facts reveals the lack of support for ICTA's claim.[95]

With respect to the Southwest,[96] DPL and Stoneville have a much smaller competitive presence than they do in the MidSouth or Southeast, in large part because their germplasm is not uniquely suited for the Southwest region. As reflected by the 2006 market shares for traited cottonseed in this region, there are a number of competing companies: Bayer 46%; DPL 26%; Stoneville 15% (Stoneville branded seed 5% and NexGen branded seed 10%); Americot 5%; All-Tex 3%; UAP 3% and Croplan 1%.[97] The divestiture of the Enhanced Stoneville Assets to Bayer and Americot does not significantly alter the competitive situation. Because Stoneville developed its NexGen brand seed specifically for the Southwest market and Americot acquired Stoneville's NexGen-related assets, the Southwest market will continue to have three seed companies with significant shares (Bayer/Fibermax, Monsanto/DPL and Americot/NexGen) and three additional companies with a smaller presence (All-Tex, Croplan, and UAP).

With respect to the West, a proper analysis must recognize that Arizona and California are very different and relatively small markets.[98] In California, nearly all of the cotton grown is either pima or acala (a form of upland cotton) [99] Stoneville does not sell pima

[88] See ICTA Comments at 8–9; AAI Comments at 11.

[89] AAI Comments at 11.

[90] See, e.g., States Comments at 5, 9; ISA Comments at 1; OFU Comments at 1; OCM Comments at 2; Plains Justice Comments at 1.

[91] Monsanto estimates, from Hugh Grant, Chairman, President, and CEO, Monsanto, Presentation at Sanford Bernstein Strategic Decisions Conference, slide 11 (May 30, 2007), *http://www.monsanto.com/pdf/investors/2007/05-30-07.pdf.*

[92] See Investor Day Presentation at slides 34, 36 and 40.

[93] See, *e.g.*, ICTA at 28, 43.

[94] ICTA notes that ''40%'' of the 36 conventional varieties planted in 2006 were DPL varieties. According to USDA 2006 data, DPL offered fifteen conventional varieties, with seven of those fifteen having sales in the MidSouth and Southeast. Six of those seven were divested to Bayer as part of the Enhanced Stoneville Assets.

[95] ICTA Comments at 5.

[96] Though the USDA classifies the Southwest as comprising Texas, Oklahoma and Kansas, we have included New Mexico in our analysis of the region. New Mexico has two distinct cotton growing areas that can be roughly described as Eastern New Mexico and the Mesilla Valley. The same cotton varieties that grow successfully in Texas and Oklahoma are used in Eastern New Mexico whereas acala varieties are primarily grown in the Mesilla Valley. Because the vast majority of cotton acreage in New Mexico is in the eastern region, we have included data from that region in our analysis of the Southwest.

[97] The United States derived the above estimated shares of traited cottonseed sales in the Southwest (including New Mexico for the reasons discussed above) from USDA data and other data received during the course of the United States's investigation. These shares discount ''saved seed''—conventional seed that a farmer saves from one year's crop to plant the next year (a practice that is more prevalent in the Southwest than the other regions due to the greater use of conventional seed which seed companies do not prohibit farmers from saving). USDA data ascribes saved seed to the seed company that originally produced the seed—even if the actual sale of that seed occurred in a previous year—and thus significantly overstates branded seed companies' shares in the region.

[98] As noted above, while classified by the USDA as part of the West, most of New Mexico's cotton production occurs in the eastern part of the state and requires the same varieties that perform well in the Southwest.

[99] There are two species of cotton grown in the United States: Pima and upland. Furthermore, there

or acala varieties. Based on 2006 market shares for traited upland varieties grown in California (which ignores the large volume of pima cotton grown in California), Stoneville has only a 3% share, while Dow has a 43% share, Bayer 38%, DPL 13% and UAP 3%. Accordingly, the transaction does not significantly affect traited cottonseed competition in California.

Like the MidSouth and Southeast, the USDA data suggest there are two significant sources of upland cottonseed in Arizona: DPL with 73% and Stoneville with 20%. Because the proposed Final Judgment adequately addresses competition issues in the MidSouth and Southeast by requiring divestiture of the Enhanced Stoneville Assets, it also resolves any potential issues for Arizona. Further, because Arizona's geography is well-suited for seed production of Southeast and MidSouth varieties, a significant amount of the upland cotton planted in Arizona is grown by farmers under contract with DPL and Stoneville for the purpose of producing cottonseed (rather than cotton fiber).[100] Thus, DPL's and Stoneville's shares in Arizona primarily reflect that they perform a substantial amount of seed production there.

*D. Prices for Cottonseed Sold for Livestock Feed*

OFU predicts that prices paid for cottonseed used in livestock feed will increase due to the merger.[101] The comment appears to misunderstand the source of cottonseed used for feed. Such seed does not come directly from the cottonseed companies. Rather, seed used for feed is the by-product of the cotton production process. The licensing agreements farmers sign in order to plant transgenic seed prevent them from planting the seed from their crop; hence, they typically sell any seed extracted from the cotton during the ginning process for oil or feed.[102] That seed does not pass through the hands of a cottonseed company on its way to be sold as feed. Nor does the OFU explain how the merger would affect prices of cottonseed sold for feed. Historically, the price of cottonseed used as livestock feed has remained fairly stable even as the price of transgenic planting seed has increased. Over the past ten years the price of seed for feed has averaged $107 per short ton, a fraction of what farmers pay per bag of transgenic seed.[103] Moreover, the price of cottonseed sold for feed is likely affected by other sources of livestock feed. Finally, even if the price paid by farmers for cottonseed for planting did affect the price of feed cottonseed, since the proposed Final Judgment preserves traited cottonseed competition, the merger should have no adverse impact on the price of feed cottonseed.

*E. Alleged Monsanto Exclusionary Business Practices*

The States contend that Monsanto will engage in exclusionary business practices post merger, such as ''acquisitions of independent seed companies and germplasm providers to enhance its monopoly position in both seed and traits; long-term, highly restrictive licensing agreements that encourage the sale of Monsanto's biotech traits exclusively; licensing restrictions that prevent independent seed companies from combining Monsanto biotech traits with non-Monsanto traits; and bundling rebates on seeds, traits and chemicals to exclude competitors from retail distribution channels.''[104]

Given both the breadth and lack of specificity of this contention, it is difficult to discern how it relates to the transaction at issue here. The actions on the laundry list articulated by the States are ones Monsanto could undertake with or without this merger, and the States do not explain why the transaction would change Monsanto's incentive or ability to engage in them. Nor do the States explain why such actions, if designed to have an anticompetitive effect, would be successful in light of the preservation of competition achieved by the required divestiture of the Enhanced Stoneville Assets.[105]

Furthermore, though the United States made no determination regarding the competitive effect of certain business practices, some aspects of the proposed Final Judgment would make it difficult for Monsanto to engage in certain of the purportedly anticompetitive practices suggested by the States. For example, the proposed Final Judgment requires Monsanto to remove anti-stacking provisions in its licenses to other seed companies and penalties for working with competing trait providers. Also, it requires Monsanto to notify the United States in advance of purchases of independent cottonseed companies and germplasm providers, affording an opportunity to investigate and if necessary challenge any that might be anticompetitive.[106]

Finally, and most fundamentally, the antitrust laws will continue to apply and would proscribe conduct by Monsanto that runs afoul of applicable legal standards.

**VII. Conclusion**

After careful consideration of the public comments, the United States remains of the view that the proposed Final Judgment provides an effective and appropriate remedy for the antitrust violation alleged in the Complaint and that its entry would therefore be in the public interest. Although the proposed Final Judgment, like any settlement, was a product of negotiation and compromise,[107] it fully achieved the United States's goals in this action. Even if the court might be inclined to view the issues differently, the purpose of Tunney Act review is not for the court to engage in an ''unrestricted evaluation of what relief would best serve the public'' [108] or to determine the relief ''that will best serve society,'' [109] it is simply to determine whether the proposed decree is within the reaches of the public interest—''even if it falls short of the remedy the court would impose on its own.'' [110]

The Court is to consider ''the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial'' [111] Because the markets identified in the Complaint are the only ones in which competition is likely to be lessened as a result of the merger, the impact of

are different types of upland cotton grown in the United States. In California, most of the upland cotton grown are acala varieties.

[100] The USDA survey data does not distinguish between cotton grown primarily for seed production and cotton grown as a crop.

[101] OFU Comments at 1.

[102] There would be excess seed even if farmers were able to replant transgenic seed because an acre of cotton yields far more seed than is necessary to replant that acre.

[103] USDA, Oil crop Situation and Outlook Yearbook, May 2007, at 47. The price of $107 per short ton translates to a price of $2.75 per 50 pound bag. In contrast, a 50 pound bag-equivalent of DP555BGRR would cost a farmer in Georgia roughly $130 for the seed alone, plus an additional $292 for the trait fee.

[104] States Comments at 8.

[105] Bayer, Dow, DuPont and Syngenta all have agricultural products that could be added to a bundle that includes cottonseed.

[106] Proposed Final Judgment at 19.

[107] In this context, it is important to bear in mind that because Monsanto had committed to selling Stoneville as a condition of its acquisition agreement with DPL, a challenge to the acquisition by the United States would have had to overcome the adequacy of a Stoneville divestiture to remedy any alleged harm.

[108] *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)).

[109] Bechtel, 648 F.2d at 666.

[110] *United States* v. *AT&T Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982).

[111] 15 U.S.C. 16(e)(l)(B).

entry of the proposed Final Judgment will be to restore any competition lost as a result of the merger. Farmers in the MidSouth and Southeast who might have otherwise suffered injury from the violation set forth in the Complaint will retain their current and prospective competitive choices for traited cottonseed by virtue of the contemplated divestitures. Based on the factors set forth in the Tunney Act, the proposed Final Judgment is in the public interest.

Pursuant to Section 16(d) of the Tunney Act, the United States is submitting the public comments and its Response to the **Federal Register** for publication. Our response is also being provided to each of the commenters. After the comments and the United States's Response to Comments are published in the **Federal Register**, the United States will move this Court to enter the proposed Final Judgment.

Dated: March 05, 2008.

Respectfully submitted,

For Plaintiff:

Jill A. Ptacek (WA Bar #18756)

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## Tunney Act Comments of the American Antitrust Institute on the Proposed Final Judgement

The American Antitrust Institute (AAI) is an independent Washington-based nonprofit education, research, and advocacy organization. The AAI's mission is to increase the role of competition, assure that competition works in the interests of consumers, and challenge abuses of concentrated economic power in the American and world economy. The AAI has had an interest in this proceeding because it raises critical issues of competition policy and consumer choice involving a key agricultural supply chain cotton. The AAI White Paper issued in November 2006 discusses some of the key issues raised by the merger.[1]

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (APPA), 15 U.S.C. 16 (the ''Tunney Act''), The AAI submits these comments on the Proposed Final Judgment (PFJ or consent decree) in the above-mentioned case. Congress has made this Court the final arbiter of the propriety of mergers under the antitrust laws. The Court must ''determine that the entry of such judgment is in the public interest.''[2] If the Court cannot make this finding, it must reject the PFJ unless more adequate provisions are made to protect the public interest. In the following analysis, the AAI respectfully argues that for the numerous reasons set forth in these comments, the PFJ is not in the public interest and must be rejected by the Court.

### I. Competitive Issues Raised by the Proposed Merger

At first blush, the products and markets affected by the proposed merger of Monsanto and Delta and Pine Land (Monsanto/D&PL) appear technical and complex. But some background provides ample basis for a clear understanding of the competitive issues raised by the merger. Cotton can be grown with three major types of seed: (1) Organic; (2) conventional, and (3) genetically modified or ''traited.'' Cotton is also grown in four regions of the U.S.—the Southeast, Mid-South, Southwest, and West. This has generated demand for cotton varieties that thrive in different soil types and climates.

Cotton is also an insect-intensive crop and competes for space with weeds. As a result, agricultural biotechnology has played a major role in the development of cotton varieties that contain genetically engineered ''traits'' that make the plants resistant to insects (insect-resistant) and tolerant to herbicides (herbicide-tolerant), which are sprayed on the plants. Conventional cottonseed does not contain such genetic traits. Organic cotton contains neither genetic traits and is grown in a way that meets organic growing standards.

The merger involves two major markets. One is the market for development of ''cotton traits.'' Monsanto has a 95% share of this market with its hugely attractive and successful insect-resistant traits Bollgard and successor Bollgard II and herbicide-tolerant traits Roundup Ready and successor Roundup Ready Flex. The second market is that for ''traited cottonseed.'' Cotton traits are ''introgressed'' (i.e., inserted through genetic engineering) into cotton ''germplasm,'' which is the genetic material that gives a cotton variety its specific characteristics. Commercially successful varieties are obtained at the very high risk of failure, i.e., after years of costly breeding and cross-breeding that ultimately produces desirable plant characteristics demanded by cotton farmers. D&PL has a 79–87% share of the Mid-South and Southeast relevant markets for traited cottonseed. The merger raises three competitive issues:

- *Horizontal-elimination of actual competition.* The merger combines two competitors—Monsanto's Stoneville business and D&PL—in the market for traited cottonseed.
- *Horizontal-elimination of a potential competitor.* The merger eliminates D&PL as a potential partner for cotton traits developers that compete with Monsanto.
- *Vertical-combination of two firms in a vertically integrated chain.* The merger combines upstream cotton traits developer Monsanto with downstream traited cottonseed seller D&PL in a vertical combination.

### II. Summary of the DOJ Documents

#### *A. Complaint/Competitive Impact Statement*

The Complaint focuses on two of the three major competitive effects listed above. It first alleges that the merger of Monsanto and D&PL will substantially lessen competition in the product market for the ''development, commercialization and sale of traited cottonseed.'' Farmers likely would have fewer choices of, and face higher prices for, traited cottonseed (Complaint at 11–12.) Relevant geographic markets are the Southeast and the Mid-South. (Complaint at 10.) Together, these regions account for 50% of cotton grown in the U.S. Cottonseed containing both (i.e., ''stacked'') insect-resistant and herbicide-tolerant traits comprises the vast majority of cottonseed planted in these regions.

In the Southeast, D&PL has an 87% market share and Monsanto's Storteville has 8%. Combining Monsanto and D&PL increases concentration by 1,489 HHI, for post-merger concentration of 9,184 HHI. In the Mid-South, D&PL has a 79% market share and Monsanto's Stoneville has 17%. The merger increases concentration by 3,310 HHI for a post-merger HHI of 9,110. (Complaint at 11.)

The Complaint explains that entry into the traited cottonseed market requires both the assets and expertise to breed high-performing varieties of cottonseed and to develop or access traits to breed into the cottonseed. Each step requires many years and tens of millions of dollars. (Complaint at 12.) Moreover, traits developers must have access to a sufficient supply of high-quality cotton germplasm. (CIS at 11.) The Complaint thus alleges that:

If there were a small but significant increase in the price of traited cottonseed

[1] See *http://www.antitrustinstitute.org/Archives/552.ashx.*

[2] 15 USC. 16(e). See. *e.g., United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458 (D.C. Cir. 1995).

within regions such as the Mid-South and Southeast, it is not likely that farmers would switch to other crops or switch purchases to conventional (non-traited) cottonseed or cottonseed varieties that are not suited to their region in sufficient volumes to make the price increase unprofitable. (Complaint at 10–11.)

The second adverse competitive effect identified by the Complaint is the elimination of D&PL as a partner for traits developers that compete with Monsanto. D&PL has partnered with Monsanto to produce traited cottonseed. However, D&PL has recently pursued more lucrative alternative partnerships with rival firms such as Syngenta. After the merger, those efforts would be ''substantially delayed or prevented,'' as would ''efforts to develop other traits that would compete with Monsanto traits and that would provide benefits to United States cotton farmers * * *'' This would likely reduce choice and raise prices for traited cottonseed. (Complaint at 12.)

*B. Proposed Final Judgment*

The PFJ sets forth a three-pronged remedy to address horizontal issues raised by the merger: (1) Divestiture of the Enhanced Stoneville Assets; (2) divestiture to Syngenta of D&PL germplasm containing the jointly developed VipCot traits; and (3) modification of Monsanto's Cotton States and other third-party traits licenses.

1. Enhanced Stoneville Assets

The PFJ proposes divestiture of the Enhanced Stoneville Assets. Three components make up the package of assets. First, Monsanto's Stoneville cotton business will be sold, including: Breeding facilities, tangible assets, brand names, breeder records, and other intangible assets. Second, the PFJ requires that Monsanto germplasm be divested. This includes four sources: (1) The ''exclusive right'' to commercialize varieties from the Advanced Exotic Yield lines; (2) all germplasm from the Marker-Assisted Breeding populations—the primary development source for Stoneville varieties; (3) a ''non-exclusive, royalty free license'' to sell and breed with varieties from the Cotton States program currently sold by Stoneville; and (4) all other germplasm in Monsanto's possession. Third, the PFJ requires the divestiture of 20 lines of ''elite'' D&PL germplasm. (CIS at 12–19.)

2. Syngenta/VipCot Divestiture

This divestiture includes 43 lines of ''promising'' D&PL germplasm into which D&PL has incorporated the VipCot insect-resistance traits. The lines will be sold to rival traits joint developer Syngenta along with performance data and certain other information. Anticipated commercialization of five of the germplasm lines is expected by 2009, three lines by 2010/2011, and the remaining lines by 2011 or beyond. Under the divestiture, Syngenta has exclusive rights to commercialize varieties developed from the lines to be divested as long as they contain one or more Syngenta-developed traits, including the VipCot traits.[3] (CIS at 19–20.)

3. Modifications to Monsanto's Cotton States and Seed Company Licenses

The PFJ requires that Monsanto modify their Cotton States and third-party cottonseed traits licenses to remove restrictions on ability of licensees to develop, market, or sell cottonseed containing non-Monsanto traits. This includes combining (i.e., stacking) Monsanto with non-Monsanto traits. The PFJ also requires Monsanto to modify its Cotton States license to eliminate any provision that allows for termination if the licensee sells cottonseed containing non-Monsanto traits. (CIS at 20–21.)

**III. Mismatches Between the Complaint and the PFJ**

The AM respectfully argues that the PFJ falls seriously short of remedying the violations alleged in the Complaint. In *Microsoft,* the Court explained that in making a public interest determination under the APPA, it should consider (among other things), the relationship between the remedy secured and the specific allegation set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties.[4]

The Supreme Court has emphasized that the purpose of a remedy is to restore or protect competition.[5] The CIS recognizes that ''the acquirer of the Enhanced Stoneville Assets'' * * * must have a credible commitment to the traited cottonseed market and have the intent and capability of competing effectively in the market.'' (CIS at 12.) The Antitrust Division Policy Guide to Merger Remedies (''Policy Guide'')[6] emphasizes this point:

> The goal of a divestiture is to ensure that the purchaser [footnote omitted) possesses both the means and the incentive to maintain the level of premerger competition in the market(s) of concern. * * * (Policy Guide at 9.)

The *Policy Guide* further states that:

> There must be a significant nexus between the proposed transaction, the nature of the competitive harm, and the proposed remedial provisions (Policy Guide at 2.)

The consent decree meets neither of these objectives, for four major reasons. Any and all of these reasons undermine the requisite nexus between the remedy and the alleged violation that is required for the PFJ to fully restore competition and therefore be in the public interest.

A. The ''strings attached'' approach to the divestitures of Monsanto and D&PL germplasm make it, in effect, a conduct-based remedy.

Divestiture of germplasm is a key component of the remedial approach taken in the consent decree. The Complaint recognizes the crucial role of germplasm in developing and commercializing traited cottonseed when it states:

> A company with a large collection of high quality, or elite, germplasm has a competitive advantage because the company has the ability to identify the best genetic material and use it in a wide variety of possible cross combinations, resulting in a greater likelihood of developing a successful variety. (Complaint at 5.)

In attempting to address the Complaint's concerns regarding actual and potential competition, the consent decree requires Monsanto and D&PL to divest various lines of germplasm. However, these divestitures come with significant ''strings attached,'' essentially making it an inadequate conduct-based remedy that masquerades as structural reform.

The consent decree is replete with exceptions, exclusions, and conditions on the to-be-divested lines of germplasm. For example, Monsanto will be allowed to obtain a license back from the acquirer to continue to use the Advanced Exotic Yield lines for its ongoing trait research project. (CIS at 15.) The PFJ also requires the divestiture of a ''non-exclusive, royalty-free license'' to sell and breed with varieties from the Cotton States program sold by Stoneville. (CIS at 15.) And Monsanto ''* * * may retain, with certain limitations, certain categories of [other] Monsanto germplasm used

[3] Monsanto will also provide the recurrent parent conventional germplasm for each line until December 21, 2014 and offer Syngenta a license to its Roundup-Ready Flex so that it can commercialize VipCot lines with stacked traits.

[4] Microsoft, 56 FJd at 1458–62.

[5] Ford Motor Co., 405 U.S. at 573; du Pont, id.

[6] United Statement Department of Justice, Antitrust Division. Antitrust Division Policy Guide to Merger Remedies. October 2004. pp. 3–4.

predominantly in its trait development and licensing business.'' (CIS at 16.)

Moreover, under the terms of the PFJ, the merged company can retain a license to use the 20 lines of D&PL germplasm to breed new varieties and sell exclusively varieties that contain only Monsanto traits. Monsanto/C&PL can continue to sell (for a limited time) conventional versions of divested varieties. The merged company may also prevent the acquirer from triple-stacking Monsanto's herbicide-tolerant and insect-resistant traits and non-Monsanto traits for a period of seven years after the divestiture. (CIS at 17–18.) Finally, divestiture of the exclusive right to the D&PL VipCot germplasm is contingent on Syngenta commercializing varieties that contain at least one of the VipCot insect-resistance traits. (CIS at 19–20.)

There is little precedent, or logic, to support the highly-qualified divestiture of tangible germplasm assets set out in the consent decree.[7] For example, the contingency on the VipCot divestiture ignores the possibility that Syngenta might undertake development of traits that are superior to or supersede the VipCot lines. The divestiture thus binds Syngenta to a current ''snapshot'' of the market and undermines the possibility that to effectively compete, the firm might make changes to its R&D strategy. The remedy will require: (1) Compliance with complex and varied licensing terms; (2) monitoring of the applicable time periods attached to various exclusions and limitations; and (3) policing of the specific purposes for which the merged company can retain use of the divested germplasm lines. All of this is costly, burdensome baggage that the consent decree necessarily attaches to the divestiture.

As a result, the germplasm ''divestitures'' required in the PFJ are really not a structural remedy at all. Rather, they are a conduct-based, regulatory-style ''fix'' that imposes on this Court a monitoring and compliance burden that it should be loathe to undertake. The logic behind the antitrust agencies' preference for structural antitrust remedies is well known. For example, the *Policy Guide* states that:

> A carefully crafted divestiture decree is ''simple, relatively easy to administer, and sure'' to preserve competition [footnote omitted]. A conduct remedy, on the other hand, typically is more difficult to craft, more cumbersome and costly to administer, and easier than a structural remedy to circumvent. (Policy Guide at 8.)

In sum, the ''divesture'' of germplasm is crippled by competition-impairing restrictions and provides the merged company with ongoing access to the assets. This ''strings attached'' approach to the divestiture of tangible property is unprecedented and will virtually ensure that the acquirer does not possess the means or incentive to maintain the level of pre-merger competition in the relevant markets.

B. The PFJ fails to create a viable competitor because it creates a patchwork of assets with no proven track record in the market.

The Antitrust Division's policy guidelines make the point that time and incentive are of the essence in restoring competition lost by the merger:

> The package of assets to be divested must not only allow a purchaser quickly to replace the competition lost due to the merger, but also provide it with the incentive to do so [footnote omitted]. (*Policy Guide* at 11.)

The CIS appears to recognize this imperative when it explains that the divestiture of Stoneville alone would be inadequate to restore the lost competition between Monsanto and D&PL (CIS at 14.) Thus, the PFJ requires that additional Monsanto and D&PL germplasm accompany Stoneville, collectively making up the Enhanced Stoneville Assets. This approach, however, is inadequate to remedy the alleged violation because it creates a ''patchwork'' of assets with no proven track record in the market. A number of facts clearly illustrate this problem.

First, the PJF merely requires the transfer of some ''promising'' and ''developmental'' lines of Monsanto and D&PL germplasm to the acquirer that have no demonstrated, immediate commercial value. For example, the CIS explains that four of the eight lines of elite D&PL germplasm include the ''recurrent conventional parents'' that account for 55% of the cotton varieties sold in the Southeast.[8] (CIS at 16.) It is important to note, however, that the commercial varieties that make up this 55% resulted from breeding and cross-breeding the recurrent conventional parents. The acquirer is therefore obtaining only the raw inputs necessary to breed varieties that could be commercially successful at some time in the future and only after considerable expenditure. As they currently exist (i.e., without further breeding), the eight D&PL germplasm lines to be divested account for varieties that are planted on a mere 1% of the cotton acres in the Mid-South and Southeast.[9]

Moreover, twelve of the 20 D&PL germplasm lines are only in the breeding ''pipeline,'' and could produce commercial varieties only over the next 10 years. (CIS at 16) This is perilously close to the expiration of the PFJ and the time frame the CIS identifies as necessary for new entry into the market for developing, commercializing, and selling traited cottonseed. Eighty percent of the D&PL VipCot germplasm to be divested under the decree is also unlikely to prove up commercially success varieties for at least another five years. (CIS at 19.)

Finally, the Advanced Exotic Yield lines and Marker-Assisted Breeding populations of germplasm are of extremely limited value to the acquirer. The CIS itself notes that this germplasm provides a ''* * * limited platform for introducing non-Monsanto traits because many are already introgressed with Monsanto traits.'' (CIS at 15, n. 2.) The consent decree requires the merged company to allow the acquirer to breed out Monsanto traits. Breeding out Monsanto traits and then breeding in competing traits will take a long time, assuming the acquirer even has the wherewithal to do so.

Second, the success of the Enhanced Stoneville Assets, in part, rides on the ability of the government to pick ''winning'' lines of germplasm that can be bred into commercially successful cotton varieties. The Complaint emphasizes the importance of possessing both high-quality, and large quantities of, germplasm for competitive success. (Complaint at 5.) And the CIS, for example, describes the importance of D&PL's '' * * * extensive breeding programs, elite germplasm collection, technical service capabilities, know-how, brand recognition, and market position.'' (CIS at 8.) Given this complexity, the chances that the government picked winners in selecting

[7] The remedy is still problematic even if the PFJ treats the various lines of germplasm to be divested as intangible property. For example, the PFJ provides no explanation as to why germplasm would be considered an intangible asset or, lilt is, why anything short of relinquishing all rights to the germplasm assets is justified. Moreover, even if germplasm legitimately constitutes intangible property, the PFJ fails to address key issues such as how non-exclusivity and other restrictions on the use of the germplasm assets will fully restore competition. Such conditions may make it more difficult for the acquirer to differentiate its product from the merged firms' products. Moreover, if the acquirer is required to ''share'' rights to the germplasm, it may not invest in R&D and marketing to the extent that it would have if the Monsanto and D&PL had fully relinquished all rights to the germplasm.

[8] This 55% encompasses cotton grown in only one of the two relevant markets.

[9] See U.S. Department of Agriculture, Agricultural Marketing Service—Cotton Program. Cotton Varieties Planted: 2006 Crop, Memphis, Tennessee, August 2006, Table I and U.S. Department of Agriculture, National Agricultural Statistics Service, Louisiana Farm Reporter 7(10), May 17, 2007.

the germplasm lines to be divested are low. And it is possible that Monsanto/D&PL influenced the selection of germplasm lines through the information they did or did not disclose to the government (which would have been at an information disadvantage). If so, the merged firm would have no incentive to provide germplasm lines that could strengthen a rival in the market.

Pairing a smattering of unproven lines of germplasm that could be years away from producing successful, commercial cottonseed varieties with Stoneville in an untested combination will not create the capability for extensive breeding and cross-breeding that is essential for commercial success. Arguably, to fully restore competition, the acquirer would need access to sufficiently large quantities of germplasm that is currently producing commercial varieties or that could produce successful commercial varieties in far less than 10 years. As it stands, there exists no compelling evidence that the unproven, untested combination called the Enhanced Stoneville Assets would survive in the market, regardless of the identity of the acquirer.

C. The proposed divested assets, if acquired by Bayer, will not provide the firm with the tools necessary to be a viable competitor.

Under the terms of the consent decree, it is highly unlikely that the proposed acquirer (Bayer) of the Enhanced Stoneville Assets will be a viable competitor to the vertically-integrated firm created by the merger. The *Policy Guide* specifically addresses the importance of the size and market position of the merged firm in crafting divestitures. For example, it states that:

> * * * integrated firms can provide scale and scope economies that a purchaser may not be able to achieve after obtaining the divested assets. When available evidence suggests that this is likely to be the case (such as where only *large integrated* [emphasis added] firms manage to remain viable in the marketplace), the entity that needs to be divested may actually be the firm itself, and blocking the entire transactions rather than accepting a divestiture may be the only effective solution. (*Policy Guide* at 14–15.)

The Complaint acknowledges that the merged firm is enormous, with a 95% share of the cotton traits market and a 79–87% share of the relevant traited cottonseed markets. (Complaint at 2.) Presumably, it was the integration of traits development and traited seed that Monsanto wanted to achieve when it stated that the purpose of the merger was to ''* * * provide a complete platform of cutting-edge seed technologies to our global farmer customer base for years to come.''[10] To address the alleged violation, therefore, the remedy must consider both the vertically-integrated nature and the scale and scope of the merged firm. The consent decree stops well short of fulfilling these requirements, for the following reasons.

First, without a complement of sufficient, market-tested assets in both the cotton traits and traited seed markets, it will be extraordinarily difficult for the acquirer to effectively engage in head-to-head ''platform'' competition with a behemoth Monsanto/D&PL—a firm that is likely to be impervious or even hostile to competition. Even the government recognizes the importance of this level of competition. For example, the CIS explains that the purpose of divesting the Enhanced Stoneville Assets is to provide:

> ''* * * the scale and scope necessary in the Southeast and MidSouth to be an effective and competitive platform for trait development.'' (CIS at 16.) and a ''* * * foundation on which to replicate the platform for trait development and commercialization that D&PL previously provided.'' (CIS at 13.)

Moreover, the Complaint admits the inextricable link between the upstream traits development and downstream traited cottonseed market:

> ''Entry into the traited cottonseed business requires the assets and expertise *both* [emphasis added] to breed high-performing varieties of cottonseed and to develop or access traits to breed into the cottonseed.'' (Complaint at 12.)

Second, the consent decree's failure to include a requirement that human capital and know-how accompany the Enhanced Stoneville Assets only increases the chances that the buyer will have neither the wherewithal nor the incentive to compete against Monsanto/D&PL. Pairing only ''promising'' and ''developmental'' lines of germplasm with Stoneville in an untested, inadequate combination is injury enough. Omitting the human capital that is essential for viably maintaining the specific, technically complex assets that are being divested is akin to turning over the keys to a nuclear power plant without any personnel to operate it.

Third, and significantly, Bayer operates primarily in the Southwest where it sells its Fibermax brand of long-fiber cottonseed. As a result, it lacks experience with cotton varieties planted in the Mid-South and Southeast.[11] Bayer has also been a limited player in traits development, with one commercially successful herbicide-tolerant trait—Liberty Link.

In light of the large, vertically integrated nature of the merged company, it is incumbent upon the government to ensure that the consent decree produces a strong rival that can quickly and fully restore competition in the affected markets. This imperative takes on even more importance when the consent decree maintains the duopoly market structure in the Mid-South and Southeast markets. In sum, the remedy delivers none of the basic requirements to ensure that the acquirer has the tools necessary to compete with a large, integrated Monsanto/D&PL.

D. The PFJ requirement that Monsanto modify its Cotton States and other third-party seed licenses fails to address the alleged violation.

The final condition set forth in the consent decree is that Monsanto will modify its Cotton States and third-party seed licenses to remove restrictions on the ability of licensees to develop, market, or sell cottonseed containing non-Monsanto traits. The intent of this requirement is to:

> ''* * * give these rival cottonseed companies the ability to partner with trait developers other than Monsanto without financial penalty * * * and to provide traits developers with ''* * * access to close to half of the current U.S. cottonseed market without having to deal with Monsanto/D&PL'' (CIS at 21.)

This prong of the consent decree fails on numerous counts to establish a nexus with the alleged violations in the Complaint.

First, the consent decree essentially directs Monsanto to cease and desist from restrictive, potentially anticompetitive practices. The Complaint notes that ''Monsanto's trait licenses with most other cottonseed companies * * * severely restrict the ability of these companies to work with other trait developers * * *'' (Complaint at 8.) Indeed, competitors have alleged that Monsanto's trait licensing and pricing practices for cotton and other crops go beyond

[10] ''Monsanto Company to Acquire Delta and Pine Land Company for $1.5 Billion in Cash,'' Press Release dated August 15, 2006. Online, Available *http://www.monsanto.com/monsanto/layout/media/06/08–15–06.asp.* Many a commentator has noted the logic of vertical integration in traits development and traited seed: ''A new gene is worthless without a quality seed base to put it in and the infrastructure to deliver it. William Lesser, ''Intellectual Property Rights and Concentration in Agricultural Biotechnology,'' AgBioForum 1(2), 1998, p. 59, quoting from Furman Seltz LLC investment report.

[11] ''Bayer's Fibermax brand has only a 2–3% share of cotton planted in the Mid-South and Southeast markets. See USDA, Cotton Varieties Planted: 2006 Crop, p. 2.

intellectual property protection and punish licensees if they sell non-Monsanto traits or other competing products.[12] By imposing the licensing modification requirement, the government seems to be trying to correct for these practices through the remedy, although they are not alleged violations in the Complaint. These practices deserve to be the subject of a complaint in an appropriate case[13] and not merely mentioned on a list of conditions here.

Second, the license modifications are designed to eliminate prohibitions on rivals stacking their own traits with Monsanto traits. Such a restraint prevents—among other things—a rival producer of traited cottonseed from bringing varieties to market with both the insect-resistant and herbicide-tolerant traits that farmers demand. At the same these restrictions are ostensibly to be removed in one part of the PFJ, however, they are to be imposed in another. For example, the consent decree prevents the acquirer of the 20 lines of D&PL germplasm from stacking Monsanto and non-Monsanto traits for a period of seven years. Perversely, therefore, the remedy attempts to finally deal (albeit in the wrong venue) with Monsanto's restrictive practices but allows Monsanto to continue to apply them to the acquirer of the Enhanced Stoneville Assets.

Third, the licensing modification requirement does not address the alleged violation that competition in the Mid-South and Southeast relevant markets will be adversely affected by the merger. The CIS refers instead to a ''U.S. cottonseed market,'' which is not defined in the Complaint at all. Had the remedy been tied to the alleged violation, it would be clear that rivals would have access—not to half of the market—but only to between 8% and 17% of the market not occupied by D&PL in the Mid-South and Southeast.

Fourth, the consent decree contains little information on the scope of the license modification requirement. The *Policy Guide* warns explicitly against vagueness and lack of clarity in crafting merger remedies:

> ''Remedial provisions that are vague or that can be construed when enforced in such a manner as to fall short of their intended purposes can render the enforcement effort useless'' (Policy Guide at 5.) and that ''A defendant will scrupulously obey a decree only when the decree's meaning is clear * * *'' (*Policy Guide*'' at 5–6.)

It is unclear as to whether the requirement applies to current and/or prospective licenses or how the specific language of the Monsanto licenses will be revised. Moreover, the license modification requirement will require burdensome monitoring and compliance which, as noted earlier, the Court should be loathe to undertake.

In sum, the licensing modification requirement contained in the PFJ represents a vague, inconsistent, and misplaced attempt to finally address restrictive, potentially anticompetitive practices long-employed by Monsanto. And while these practices should be addressed elsewhere, they do not respond to any particular violation in any defined relevant market in the Complaint. As such, the remedy will not fully restore competition in the relevant markets.

## IV. Conclusion

The Court should not give DOJ ''a pass'' in its review of this merger. The merger raises serious questions regarding a key agricultural supply chain and the many consumers that it will indelibly affect. There is little in the PFJ that is likely to preserve effective competition in the relevant markets, or to prevent the consumer harm that will flow from the impairment of competition. The proposed remedies are largely conductbased and really do not go beyond the scope of the original proposals offered up-front by Monsanto. Moreover, the PFJ ignores the fact that the acquirer of the divested assets must have both the means and incentive to compete with a large, vertically firm that possesses an unrivaled ''platfonn'' for trait development and traited seed commercialization. On this basis, the Court should reject the PFJ as insufficient and contrary to the public interest.

Respectfully Submitted,

Diana Moss,

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August 20, 2007

Ms. Donna N. Kooperstein,

*Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC 20530.*

Re: *United States* v. *Monsanto Company, et al.*

Dear Ms. Kooperstein:

I am writing you today as the Board President of California Consumers United to voice my concerns not only for the State of California but for the nation as a whole. As a consumer protection coalition, California Consumers United advocates for sound legislation and strong regulations that safeguard all California consumers against unfair business and marketplace predatory practices.

Increased agricultural concentration, which is occurring at an alarming rate, is harmful to our nation's economy and well-being. This concentration harms consumers and farmers in the state of California—and throughout the country—by leading to limited choices, higher prices, and increased costs. Monsanto's acquisition of Delta & Pine Land Company is one more example of this distressing trend.

Monsanto, an agriulture conglomerate, already has monopoly-like shares of biotech traits in several crops, including cotton. The Department of Justice's consent decree regarding Monsanto's acquisition of Delta & Pine Land Company will only reinforce Monsanto's control over the markets for cotton seeds and cotton biotech traits. This likely will result in severe consequences to Californians and cause damage to consumers in the form of higher prices and fewer choices. The remedy proposed by the Department of Justice to cure the anticompetitive effects of this deal—divestiture of a weak cotton seed company and a few lines of germplasm—are incapable of safeguarding competition.

There is already not enough competition in agriculture; the Department of Justice should not allow one company to control access to the cotton market. We therefore urge the Department of Justice to reconsider its consent decree or, if the Department will not change course, for the Court to reject it.

Sincerely,

Linda Love,

*Board President, California Consumers United.*

Submitted August 27, 2007

United States of America, Department of Justice, Antitrust Division, 325 7th Street, NW., Suite 500, Washington, DC 20530, Plaintiff, v. Monsanto Company, 800 North Lindbergh Boulevard, St. Louis, MO 63167 and Delta and Pine Land Company, 1 Cotton Row, Scott, MS 38772, Defendants.;

Case: I:07–cv–00992
Assigned To: Urbina, Ricardo M.
Assign Date: May 31, 2007

[12] For a summary of pending legal proceedings, see, e.g., Monsanto Company, Form 10-K. 2005. Online. Available *http://www.monsanto.com/monsanto/content/media/pubs/2005/MON_2005_10-K.pdf.* More detail on specific allegations regarding Monsanto's conduct involving cotton and corn is available in, e.g., *American Seed Co., Inc.* v. *Monsanto,* Case I:05–cv–00535–SLR, U.S. District Court for the District of Delaware, July 26, 2005, *Monsanto Company* v. *Syngenta Seeds, Inc.,* Second Amended Complaint, Civil Action No. 04–305–SLR (consol.), U.S. District Court for the District of Delaware, August 12, 2005; and *E.I. DuPont de Nemours and Company* v. *Monsanto Company,* Amended Complaint and Jury Demand, Civil Action No. 4:00–952–23, U.S. District Court for the District of South Carolina, May 24, 2001. These cases are provided for illustrative purposes—some are still pending and therefore outcomes are undecided.

[13] Moreover, Monsanto's practices should be examined not only with regard to the licensing of cotton traits, but corn and soybeans as well. It is not unusual for a company to adopt parallel competitive practices in various of its divisions, and what has been advantageous in another market might well be applied in the cottonseed market.

Description: Antitrust

**Comments of Dupont on Proposed Final Judgment**

This case raises critical issues regarding the future competitiveness of American agriculture. The transaction at issue combines the dominant supplier of biotech traits with the dominant cottonseed company. Among other things, it eliminates head-to-head competition in the development of new traits to challenge Monsanto's established monopoly. Since biotech is as important to agriculture as agriculture is to the U.S. economy, the competitive implications cannot be overstated.

There is no question that Monsanto's acquisition of DPL would violate the antitrust laws, and the Complaint filed by the Justice Department's Antitrust Division details the serious harm to farmers and consumers that will result. Nor is there any question that significant remedies are necessary, including divestitures and reform of Monsanto's restrictive licensing practices as proposed. The only question before the Court under the Tunney Act is whether the Antitrust Division settled for too little, i.e., whether the patchwork quilt of proposed remedies provides a viable alternative to the competitive presence of an independent DPL, such that trait developers will continue to incur the significant cost and risk of competing with Monsanto.

The answer to that key question, DuPont respectfully submits, is ''no.'' The objective facts on the face of the Complaint make plain that the ''Enhanced Stoneville'' collection of assets, even combined with their new owner Bayer, does not come close to creating a viable trait development partner that can replace DPL in terms of resources and market access for cottonseed. Accordingly, DuPont has determined that it cannot justify further investment in developing competing cotton traits, and is terminating that work. The bottom line is that, without substantial additional remedies, this transaction will reduce choices and raise prices for farmers and consumers.

*A. Standard of Review*

The Tunney Act imposes a duty on the reviewing court to evaluate the remedies proposed in light of the competitive injury detailed in the Division's Complaint. The statute requires that ''[b]efore entering any consent judgment proposed by the United States * * *, the court shall determine that the entry of such judgment is in the public interest.'' 16 U.S.C. 15(e)(1). In applying this ''public interest'' standard, the burden is on the government to ''provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *United States* v. *SBC* v. *Verizon*, 2007 WL 1020746, *16 (D.D.C. 2007), citing *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1460–61 (D.C. Cir. 1995).

The Government has an extra burden, we submit, when it changes its view on an identical transaction within a span of only a few years. In 1999, the Division decided to challenge Monsanto's proposed acquisition of DPL,[1] indicating that no acceptable remedy was available. Since that time, the marketplace has changed in ways that make this combination even more competitively harmful:

- Monsanto's share of traits in cotton is higher;
- DPL's seed share in key cotton-growing regions is higher;
- DPL is actively engaged in joint development of traits that, but for this acquisition, would compete with Monsanto's trait monopoly.

In light of these heightened competitive concerns, the Court should expect that the Division will explain in detail the basis for the different outcome.

*B. Acknowledged Competitive Harm*

For the benefit of the reviewing Court, this section will distill the salient allegations underlying the violation alleged in the Complaint.

The Complaint begins with an arresting fact: Monsanto's share of biotech traits in cotton is ''over 96%.'' Complaint ¶ 3. The Division's subsequent characterization of Monsanto as the ''dominant'' supplier of traits thus is an understatement. Id. at ¶ 6. For important traits that are used in ''almost all'' cottonseed planted today to lower farming costs and increase yield (i.d. at ¶ 18–19, 22), Monsanto is essentially the only game in town.

There are challengers to Monsanto's trait monopoly, and that competition is what is at stake in this proceeding. As the Complaint recognizes, DPL was working with other biotech companies including DuPont to develop and commercialize traits and seed ''that would compete with'' Monsanto's existing traits. Id. at ¶ 26. DPL's competitive activity ''jeopardized'' Monsanto's trait monopoly, id. at ¶ 6, as Monsanto ''recognize[ed] the potential for a successful pairing of DPL's cottonseed with competing traits.'' Id. at ¶ 7. So Monsanto now has acquired DPL in a transaction that ''will * * * eliminate DPL as a partner independent of Monsanto for developers of traits that would compete against Monsanto,'' and therefore ''will *likely delay if not deter efforts to develop other traits that would compete with Monsanto traits.*'' Id. at ¶ 42 (emphasis added). As a result, ''farmers likely will have *fewer choices* of, and face *higher prices* for, traited cottonseed.'' Id. (emphasis added).

Importantly, the Complaint backs up these conclusions of severe competitive harm in violation of the Clayton Act with key facts regarding DPL's unique role as a trait development partner. Developing and commercializing a new trait to compete with Monsanto's entrenched position is no mean feat. It not only takes time and money, but requires specialized resources that DuPont and others do not have so were relying on DPL to supply, in several categories.

1. *Germplasm:* First, the Complaint explains the importance of germplasm, which is the genetic material that encodes agronomic characteristics of a plant, such as yield. Id. at ¶¶ 14–16. Successful cottonseed is created by combining (or ''crossing'') different lines of germplasm to enhance the performance characteristics of the plant. Id. As stated in the Complaint, this is not a one-shot effort, but rather an on-going one: ''to be competitive, cottonseed companies must continually work on developing new and improved cottonseed varieties through their breeding programs.'' Id. at ¶ 15 (emphasis added). The product of the initial cross is then ''further cross[ed]'' with still other germplasm lines. Id. This breeding process ''often requires thousands of attempts'' before germplasm with the right genetics is created that will be the basis for a successful commercial variety. Id. at ¶ 28 (emphasis added). It generally ''takes eight to ten years * * * until a new cottonseed variety is ready for market.'' Id. at ¶ 15 (emphasis added).

So there is no dispute that one very important key to successful breeding is the ''quantity and quality'' of germplasm lines available to be used in the thousands of crosses required to breed competitive cottonseed. Id. at ¶ 16. The Complaint states that a ''large collection of high quality * * * germplasm'' creates a ''competitive advantage.'' Id. The obvious reason is that a company

[1] As a senior Antitrust Division official testified before Congress, Monsanto called off its 1999 attempt to purchase DPL after DOJ ''indicated that it was prepared to sue to prevent consummation of the transaction.'' John M. Nannes, Statement Before the Subcommittee on Antitrust, Business Rights, and Competition, United States Senate Judiciary Committee (Sept. 8, 2000) (available at *http://www.usdoj.gov/atr/public/testimony/6581.pdf*).

with such assets is best positioned to engage in the ''wide variety of possible crossing combinations'' necessary to produce a ''successful variety.'' Id.

In this regard, the Complaint acknowledges that DPL is unique. Not only is it the ''largest cottonseed producer in the world,'' but it has ''the largest cotton germplasm collection.'' ID. at ¶¶ 13, 17 (emphasis added). Indeed, the Complaint recounts that Monsanto itself chose DPL as its development partner because it had, quite simply, ''the best germplasm.'' Id. at ¶ 20 (emphasis added). And DPL remains an ''attractive partner'' because of ''the strength and breadth of its germplasm base.'' Id. at ¶ 26 (emphasis added).

2. *Breeding Infrastructure:* Another key factor is the specialized facilities to effectively use the germplasm collection in a successful breeding program over time. Again, the Complaint sets DPL apart from other cotton companies. Its large network of facilities gives it ''more breeding capabilities than any competitor.'' Id. at ¶ 17 (emphasis added).

3. *Experienced Breeders:* The Complaint recognizes DPL has ''experienced and knowledgeable cotton breeders'' (id. at ¶ 5) with the ''know how'' and ''technical service capabilities'' to use all these assets in a highly effective manner that well exceeds that of any alternative cottonseed company. Id at ¶ 26. The Complaint states in unequivocal terms that DPL's ''over ninety years of germplasm development'' has produced not just the greatest breeding track record, but ''by far the greatest track record of success'' in the breeding of cottonseed varieties that are attractive to farmers. Id. at ¶ 17 (emphasis added).

4. *Market access:* This success is manifest in DPL's high share. It is again an understatement for the Complaint to say DPL has the best ''brand recognition'' and ''market position'' to support development and commercialization of competing traits. Id. at ¶ 26. In the ''important'' cotton growing regions of the Southeast and MidSouth, id. at ¶ 8, DPL has breathtakingly high shares of 87% and 79%. Id. at ¶ 4. Obviously, this level of market access is not only unique, but is extremely valuable to a trait development partner seeking a return on investment through a successful commercial launch.

5. *Stacking rights:* Another advantage of partnering with DPL is it has IP rights that the Complaint says ''most other cottonseed companies'' do not. Id. at ¶ 27. Since farmers want multiple traits, seed increasingly is sold with multiple traits ''stacked'' in it. Monsanto generally uses licensing terms that ''severely restrict'' the ability of a seed company to stack a non-Monsanto trait with a Monsanto trait. Id. DPL, as further evidence of its strong competitive presence, had stacking rights that are important in introducing new traits.

6. *Business Strategy:* Finally, DPL was motivated to support Monsanto's competitors like DuPont. It ''publicly stated its intent'' to work with other trait developers to ''replace Monsanto traits in its products.'' Id. at ¶ 6. This business ''strategy to replace (or 'trade-out') the Monsanto traits'' would be ''profitable for DPL.'' Id. at 25 * * *.

For all these reasons, DPL was not just an ''attractive partner'' for Monsanto's trait competitors (id. at ¶ 26), it was ''an unparalleled avenue through which to commercialize and market'' traits. Id. at ¶ 5 (emphasis added). No other cottonseed company has the combination of key resources, again in the superlative terms of the Division's Complaint:

- The ''LARGEST'' cotton germplasm collection, and
- The ''BEST'' germplasm, and
- ''MORE'' breeding capabilities ''than any competitor,'' and
- ''BY FAR THE GREATEST'' track record of success in breeding new cotton varieties, and
- ''87% and 79%'' of cottonseed sales in ''important'' regions, and
- STACKING RIGHTS ''most other cottonseed companies'' do not have, and
- An announced ''STRATEGY'' of working with Monsanto's competitors to develop and commercialize competing traits.

DuPont agrees with the Antitrust Division that this combination of resources is what makes DPL ''unparalleled'' in its ability to support the development and launch of competing traits. That is why DuPont was partnered with DPL to develop Optimum(tm) GAT(tm) for cotton, a new trait offering resistance to two different classes of herbicide that would provide a competitive alternative to Monsanto's RoundUp Ready monopoly. And DuPont agrees that significant divestitures and reform of Monsanto's ''severely restrict[ive]'' licensing terms are necessary parts of effective relief.

But DuPont respectfully submits that, even upon cursory review, the Complaint's exposition of DPL's competitive significance as a trait development partner makes clear that the remedies proposed fall far short of creating a viable alternative. Therefore they do not satisfy the legal standard of ''restoring competition'' to Monsanto's current trait monopoly. The following section analyzes why the proposed remedy does not adequately address the violation alleged in the Complaint.

*C. Inadequacy of the Proposed Remedy*

To settle the case, the Division offers a Proposed Final Judgment (''PFJ'') that is explained in the Competitive Impact Statement (''CIS''). The CIS sets the bar correctly: To ''ensure the continued presence of a cottonseed company independent of Monsanto with sufficient germplasm and breeding capabilities to serve as an effective platform for development of cottonseed traits in competition with Monsanto.'' Id. at 12. But the PFJ does not deliver: The remedies are self-evidently insufficient to provide a viable alternative to DPL as a trait development partner and thereby restore the competitive harm alleged in the Complaint. As discussed below, there is no ''factual basis'' on which the Court could conclude that the Proposed Final Judgment contains ''reasonably adequate remedies for the alleged harms'' and is in the public interest.

1. Proposed Remedy

a. *Stoneville:* First, Monsanto is required to divest its U.S. Stoneville business, including Stoneville's germplasm and assets, together with expanded stacking rights. PFJ at 3–4; CIS at 13–14. Describing Stoneville as ''the second largest traited cottonseed company in the MidSouth and Southeast'' (CIS at 9) greatly overstates its relative position. The CIS itself contains the share data making clear Stoneville pales in comparison to DPL: ''In the MidSouth, DPL and Stoneville account for approximately 79% and 16%, respectively, of traited cottonseed sales. In the Southeast, DPL and Stoneville account for approximately 87% and 8%, respectively, of traited cottonseed sales.'' Id. at 10. Further, published data from USDA demonstrates that Stoneville's share in those regions has declined over the past three years.[2]

Stoneville's germplasm pipeline is said to include: ''Approximately 35 mid-to full- and full-season lines for potential commercialization in the MidSouth and Southeast between 2008 and 2012.'' Id. at 13. The CIS does not explain what the likelihood this ''potential'' will come to fruition is, nor what share Stoneville predicts it could achieve. Nor, tellingly, does it state

[2] USDA Agricultural Marketing Service—Cotton Program, ''Cotton Varieties Planted'' 1998–2006, Table 1 [hereafter ''USDA Cotton Data''].

comparable figures for the number of lines DPL will offer in the same regions.

Although divesting Stoneville ''remedies'' the horizontal effect of increased concentration at the cottonseed level, it does not address the competitive harm at the trait level, as Stoneville is clearly an inadequate trait development platform.

b. *Additional Monsanto Cotton Germplasm:* Because of the inferiority of the Stoneville assets, Monsanto is required to divest other cotton germplasm that was not integrated into the Stoneville business. PFJ at 3–4, Schedule B. These assets are described as follows:

(i) ''*Advanced Exotic Yield Lines:*'' These ''promising developmental germplasm lines'' are derived from ''exotic cotton plants that could be bred into commercial varieties to increase yield.'' Monsanto reportedly ''anticipated'' that seed varieties that could be developed from this germplasm would be ''well-suited'' for the Mid-South and Southeast regions. Although the rights are termed ''exclusive,'' Monsanto retains the ability to obtain a ''license back'' for ''ongoing trait research.'' CIS at 14–15 (emphasis added).

(ii) ''*Marker Assisted Breeding (MAW) Populations:*'' This germplasm was developed in a ''program * * * *intended* to enable breeders to use sophisticated molecular technology to aid in the selection of promising lines * * *'' Id. at 15. Again, Monsanto is said to have ''*anticipated*'' that this germplasm could be used to develop seed products over four years. But the CIS acknowledges it is only a ''*limited platform*'' for competing traits because the purchaser will have to take the time and expense of first breeding out Monsanto traits. Id. at n. 2.

(iii) ''*Cotton States Germplasm*'' and ''*Other Germplasm:*'' Monsanto must divest only a *non-exclusive* license ''to sell and breed with varieties from Monsanto's recently established Cotton States program *that Stoneville currently sells today.*'' Monsanto also must divest only its rights ''to commercialize varieties that result from pre-existing crosses of Stoneville germplasm and Cotton States Licensors germplasm.'' And Monsanto must divest ''all other germplasm'' it currently holds, ''except * * * certain categories of germplasm used predominantly in its trait development and licensing business.'' Id. at 15–16.

c. *DPL Germplasm:* Yet a third tranche of divested germplasm consists of twenty DPL conventional varieties, including eight ''*in the pedigrees* of many of DPL's popular current varieties in the MidSouth and Southeast.'' PFJ at Schedule B; CIS at 16 (emphasis added). The CIS does not disclose how many other DPL germplasm lines are represented in the lineage of these currently popular varieties. Nor does it explain how many ''parents'' are required to develop a single competitive cotton variety.

The other twelve varieties reportedly ''constitute a *significant* portion of DPL's breeding pipeline for the MidSouth and Southeast and represent the varieties, and breeding stock for the varieties, that DPL had chosen to bring to market over the next decade.'' Id. Although we are told that ''[o]ver the past four years, each of these twelve varieties has been ranked by DPL * * * as falling within DPL's top category for conventional lines * * *'' Id. at 17, important questions remain unanswered, including:

- Where do these lines rank?
- How many other varieties are so ranked?
- How many other germplasm lines were required to create the twelve lines to be divested?
- How many would be required to create the next generation of these varieties?

The twenty DPL varieties to be divested will, like the non-Stoneville Monsanto germplasm, be released to their purchaser as stand-alone assets. They are not integrated within the Stoneville cotton development program, so will have several competitive disadvantages, including:

- They will not be accompanied by any of the development resources (breeding experts, infrastructure, etc.) used to create them at DPL.
- They will not be divested with access to ''performance data and other information'' deemed necessary to the divestiture of certain germplasm to Syngenta. Id. at 19.

The CIS does not explain how an acquirer could integrate all these disparate germplasm lines into an effective breeding program that might produce commercial varieties, or how long that would take.

Moreover, divestiture of the DPL germplasm is non-exclusive, in that Monsanto and DPL will ''retain a license to continue using these twenty lines to breed new varieties and to sell exclusively varieties that contain only Monsanto's traits.'' Id. at 17. That unusual weakening of the remedy is defended as necessary ''to preserve DPL's current competitiveness, prevent disruption to its breeding program, and provide DPL the ability to compete effectively in the future.'' Id. There is no explication of factual support for those conclusory statements.

The bottom line is that the acquirer of ''Enhanced Stoneville'' has the right to breed certain parent lines but not, in Dupont's experience, the resources to create commercial varieties in any reasonable amount of time. It must do so in competition with a combined Monsanto/DPL that retains all those resources, know how, and marketplace advantages. Nor, given that Monsanto/DPL retains parallel rights, does the CIS explain how the purchaser would have an incentive comparable to the incentive DPL's exclusive rights gave it invest in developing these lines before the merger.

2. Independent DPL vs. ''Enhanced Stoneville''

This is not a close call. The monopolist has acquired the premier development partner with all the necessary resources its rivals were relying on to be competitive. As a substitute, it proffered a cobbled-together combination of disparate germplasm and other assets with all sorts of strings attached that have no comparable competitive presence today or in the future, and then sold them to a company that brings no meaningful complementarity. This remedy plainly does not return the marketplace to the level of competitive trait development resources eliminated by the transaction. Taken alone, each element lacks attributes that DPL brings to the competitive landscape. Taken together, they are a ''mix and match'' group of assets that lack the necessary prospect of competitive viability the Antitrust Division itself says is critical to effective merger remedies. Rather, the combined Monsanto/DPL team is off and running in this competitive race while the Bayer/Stoneville team is stuck at the starting line trying to find the right shoes to put on.

First, the CIS acknowledges that ''[d]ivesting Stoneville by itself would not fully restore the lost competition between Monsanto and DPL.* * *'' Id. at 14. As has been discussed, Stoneville has a perennially low, and of late declining, share in areas identified as important for traits by the DOJ. The fact that DPL is 5 to 10 times larger than Stoneville reflects the inferiority of the Stoneville germplasm and breeding program.

There is no evidence Stoneville's germplasm is likely to improve significantly over time. Stoneville's breeding program lags DPL's significantly. For example, DPL has ''*eleven* strong worldwide plant breeding programs developing new elite

genetics to integrate existing and new biotechnology,'' compared to just two at Stoneville. ''Cotton and Soybean Seed Research,'' *http://www.deltaandpine.com/research.asp;* ''Delta & Pine Land Quarterly Summary,'' GARP Research and Securities (April 10, 2007).

Other industry participants have acknowledged Stoneville's inferiority as a development partner by their conduct. Although Stoneville was an independent cottonseed company between 1999 and 2005, the period during which various partnerships began work on non-Monsanto traits for cotton, companies like Dow, DuPont, Syngenta, and Bayer did not choose to collaborate with Stoneville, but with DPL. See Complaint ¶ 26. Even Monsanto would prefer to work with DPL rather than continue ''building its own cotton business'' with Stoneville. CIS at 8.

Divestitures of ''other Monsanto germplasm'' and select strains of DPL germplasm do not close the wide gap between DPL and Stoneville. The CIS contains many carefully chosen descriptions of the ''Enhanced Stoneville'' that clearly are damning with faint praise. For example, the CIS characterizes the ''Enhanced Stoneville Assets'' as providing ''tools'' that can be ''a significant base'' and even a ''foundation'' for competing trait developers. Id. at 13. Further, the CIS repeatedly describes the divested germplasm in aspirational terms, as ''promising'' and ''anticipated'' to be developed into competitive seeds at some point in the future. These characterizations are not a sufficient basis to conclude the remedy will meet the Division's own standard of creating a cottonseed company that competing trait developers can rely upon in making investment decisions.

Analysis of the USDA data further demonstrates the divested assets are inadequate to create a viable development partner. First, very few newly introduced varieties become commercial successes. DPL introduced 64 unique cotton varieties incorporating traits in the past eight years, but only 14 ever came to represent 1% or more of annual U.S. cottonseed acres USDA Agricultural Marketing Service—Cotton Program, ''Cotton Varieties Planted'' 1998–2006, Table 1. Thus, current expectations about the germplasm lines likely to produce competitive products in the future are not reliable, and clearly no substitute for DPL's ''by far the greatest track record of success'' in developing new cottonseed.

Moreover, what is successful for certain growing conditions will not necessarily be successful in others. That is why DPL has offered consistently over 20 commercial varieties in a single growing region. Indeed, again based on the USDA data, we find that 30 of the 40 varieties DPL offered in the Southeast or MidSouth regions in 2006 had less than 1% share in both of those regions. well over half of the varieties DPL offered in the Southeast or Mid South regions (48/73) never achieved a 1% share. Id.

Second, current market success is not a good predictor for the future commercial appeal of existing varieties or their offspring. Each year, roughly a third of American cotton acres are planted with new varieties that were commercialized within the previous three years, and roughly two-thirds of acres are planted with varieties less than five years old. 4. Even if the proposed germplasm divestitures created a lineup of competitive varieties in 2008, there is no assurance they will address the longer term loss of competition.

This point is key for trait developers facing major investment decisions. Traits must be sold in successive generations of popular cotton varieties, because most trait value is realized through sales in varieties that were not yet invented on the date of the trait's commercial introduction. For instance, analysis of the USDA data shows that, just three years after Monsanto's BollgardfRoundup Ready trait stack was introduced in 1997, over half of the acres planted with that stack were cotton varieties introduced after 1997.

For that reason, firms will only invest in trait development if they are working with a development partner with the germplasm and other resources to support the consistent introduction of new, commercially appealing varieties over the longer term. The ''Enhanced Stoneville'' assets do not warrant such a significant financial commitment. Further, divestiture of the other Monsanto and DPL germplasm under the proposed terms is even less likely to restore lost competition because it is, in many cases, nonexclusive and/or bound up with Monsanto intellectual property.

In a broader sense, the proposed divestitures are flawed because they lack organizational and developmental context. In its policy statements about remedies, the Division has explained that ''[r]estoring competition requires replacing the competitive intensity lost as a result of the merger.'' *Policy Guide to Merger Remedies* at 5. To ensure that this is the case, the Division emphasizes its preference for ''divestiture of an existing business entity that has already demonstrated its ability to compete in the relevant market.'' Id. at 12.

By contrast, the collections of germplasm to be divested are unrelated to one another and are not integrated into a single breeding program, as DPL was. These disparate assets thus lack many of the complements required to restore competition, including the breeders who have experience working with the assets in question, key historical information about performance and breeding history, and regional breeding facilities well-suited to the growing of distinct varieties. Stripped of their context in an existing business entity, the additional germplasm assets have ''not demonstrated the ability effectively to compete'' as set forth in the Division's internal policies. Id. at 13.

Bayer, which acquired the ''Enhanced Stoneville,'' offers no solace to trait developers. Bayer's 2006 share of cotton acres planted was just 3.1% in the Southeast region and 2.5% in the Mid South region. Between 1999 and 2006, according to USDA, Bayer introduced just one cotton variety that gained a share of 5% or more in either of these regions, compared to ten such varieties from DPL. So it has no track record of success in these key regions to build on. Adding ''Enhanced Stoneville'' and stacking rights is simply too little too late to make Bayer a viable trait development partner.

All these factors obviously increase the risk for any trait developer, and DuPont is no exception. It has invested millions of dollars in its joint development project with DPL. But, after evaluating its options in the wake of this transaction, it concluded that further investment with a cobbled-together Bayer/Stoneville does not make economic sense. DuPont therefore has initiated the process of terminating the project. The result, of course, is that Monsanto's monopoly in herbicide tolerant cotton traits will be preserved, so farmers will face fewer choices and higher prices.

*D. Additional Remedies*

The Complaint is clear that what makes the opportunity for cotton trait development attractive is the availability of an exceptional cottonseed company as a development partner. As discussed above, that company, DPL, has the best of all necessary attributes as a trait development partner: The best market access, best germplasm, best breeding programs, best track record of introducing successful new varieties, best IP rights, and best incentive to compete. The Complaint makes clear that DPL is by far the most attractive and efficient development partner,

indeed in DuPont's view the only viable partner in cotton.

The remedy therefore that would restore competition is one that maintains the competitive resources needed to develop new traits. Any remedy that eliminates an independent DPL has significant risks. But the only remedy DuPont can envision that would have a reasonable chance of preserving competition would be divesting all of DPL's germplasm and its breeding operations, as well as associated IP rights.

*E. Conclusion*

The Complaint sets forth a clear and compelling story of the competitive injury that will result from the proposed transaction. The remedy proposed in the Final Judgment falls far short of what would be necessary to have a reasonable prospect of maintaining competition in trait development. The result is clear: harm to farmers and consumers from a further entrenched Monsanto monopoly.

For the foregoing reasons, DuPont respectfully submits that the Proposed Final Judgment does not meet the ''public interest'' standard of the Tunney Act.

Respectfully submitted,

Thomas L. Sager,
*Vice President and Assistant General Counsel, E.I. du Pont de Nemours & Company, 1007 Market Street, D–7038–3, Wilmington, DE 19898.*

Dated: August 27, 2007.

Of Counsel:
Wm. Randolph Smith, Jeane A. Thomas, Ryan C. Tisch, Crowell & Moring LLP, 1001 Pennsylvania Avenue, NW., Washington, DC 20004.

August 10, 2007

Donna N. Kooperstein, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC 20530.

Re: *United States* v. *Monsanto Company, et al., Case No. 1:07–cv–00992*

Ms. Kooperstein:

I am writing on behalf of our organization to object to the proposed final judgment that the U.S. Department of Justice (''DOJ'') has filed in the above-referenced lawsuit. Monsanto's acquisition of Delta and Pine Land Company (''Delta'') will solidify Monsanto's monopoly in the market for cotton seed and will have harmful ripple effects for Illinois's farmers, consumers and agricultural economy.

The State of Illinois has the second largest acreage of corn and soybeans planted in the United States. We are concerned that Monsanto's proposed acquisition of Delta is another step in its efforts to monopolize the market for seeds and biotech traits not just in cotton, but also in corn and soybeans. Monsanto is rapidly acquiring a variety of seed companies to commercialize its monopoly traits. In fact, its current iron grip on the corn seed market is an issue of extreme concern to our member farmers. With monopoly control over cotton, Monsanto will be able to prevent competing varieties from coming to market—alternative varieties that could have important application in corn and soybeans. The result will be devastating to Illinois farmers who need new and improved varieties to increase productivity in their crops and battle environmental conditions that threaten their livelihoods. Without market competition, our farmers will suffer from lack of alternative products and higher prices. We are disappointed that, by allowing this acquisition to proceed, the DOJ is ignoring the interests of our farmers and consumers.

The clear reason for Monsanto's acquisition of Delta is elimination of competition in seeds. There is nothing about the acquisition or the DOJ's proposed final judgment that will increase competition in cotton, or for that matter, in corn or soybeans. The divestiture of Stoneville, a much smaller cotton company, together with limited access to a limited line of seed germplasm, is not an adequate remedy. The acquisition hurts farmers and consumers, while only benefiting Monsanto.

Sincerely,
Bridget Holcomb,
*Agricultural Policy Coordinator.*

**Tunney Act Comments of the International Center for Technology Assessment and Center for Food Safety on the Proposed Final Judgement**

The International Center for Technology Assessment (CTA) is a non-profit, bipartisan organization committed to providing the public with full assessments and analyses of the impacts of technologies on society. CTA is devoted to fully exploring the economic, legal, ethical, social and environmental impacts that can result from applications of technologies or technological systems. The Center for Food Safety (CFS) is a national nonprofit membership organization founded by CTA to educate the general public and decisionmakers on the social, environmental and other impacts of agricultural technologies and systems; to secure adequate regulations to protect the general public and farmers from ill effects of agricultural technologies and systems; and to promote sustainable agriculture.

In February 2007, CTA and CFS published a comprehensive review of the proposed merger entitled ''Cotton Concentration Report: An Assessment of Monsanto's Proposed Acquisition of Delta and Pine Land'' (which we are also submitting as part of these comments).

CTA and CFS submit these comments and attachments pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (APPA), 15 U.S.C. 16 (the ''Tunney Act''). For the reasons discussed below, CTA and CFS believe that the Dept. of Justice's proposed final judgement (PJF) in this case is not in the public interest, and therefore must be rejected by this Court.

**I. Background on the Cotton Seed Industry**

Some basic background on the cotton seed industry is required to understand the competitive issues raised by the proposed merger.[1] There are two major types of cotton seed: (1) Conventional; and (2) genetically modified or ''traited'' cotton seed. Cotton is grown in four major regions of the U.S.: The Mid-South, Southeast, Southwest and West. Many different varieties of cotton have been developed by breeders. Cotton varieties have been bred for different combinations of properties, such as yield, disease resistance, suitability to certain climates or soil types, as well as quality characteristics such as fiber strength and length. ''Traited'' cotton seed is developed from conventional cotton varieties by means of genetic modification, which is used to introduce or ''introgess'' ''cotton traits.'' At present, cotton traits are limited to ''herbicide-tolerance'' (HT) and ''insect-resistance'' (IR). The HT trait allows farmers to spray herbicides on the cotton plant to kill surrounding weeds. The IR trait protects cotton from certain insect pests. Conventional cotton does not contain these traits. In 2006, the USDA identified 203 cotton varieties planted in the U.S.: 36 conventional varieties and 167 traited varieties (CTA, Figure 7).[2]

The merger involves two major markets. One market is the development, commercialization, and sale of cottonseed, both conventional and traited. The top three firms in this market are responsible for 92–93% of U.S. sales: DPL (51%), Bayer CropScience (30%) and Monsanto's Stoneville (12%) (CTA, Figure 1). The second is the ''upstream'' market for development of cotton traits. Monsanto has a 96% market share in traits, with Bayer and Dow accounting for the rest. Monsanto's HT traits are Roundup Ready and Roundup Ready Flex, both of which confer resistance to glyphosate herbicide; Monsanto's IR traits are

[1] Throughout these comments, we reference the attached ''Cotton Concentration Report'' for fuller discussion of issues raised. References are of the form ''CTA, Section #'').

[2] Unless otherwise noted, statistics on cotton varieties planted in the U.S. are derived from USDA, Agricultural Marketing Service, ''Cotton Varieties Planted'' report for 2006, which contains detailed information on varieties of cotton planted. Reference in CTA, Bibliography.

Bollgard and its successor, Bollgard II. The only other commercialized cotton traits are Bayer's LibertyLink (HT) and Dow's Widestrike (IR). 95% of traited cottonseed contains only Monsanto trait(s); 4% only Bayer's trait; and 1% a combination of a Monsanto and either a Bayer or Dow trait (CTA, Figure 2).

**II. DoJ Construes Relevant Product Market Too Narrowly**

DoJ defines the relevant product and geographic markets as ''the development, commercialization, and sale of traited cottonseed for the MidSouth and Southeast'' (CIS, p. 9). The DoJ bases its product market definition (''traited cottonseed'') on several empirically false statements. First ''Farmers grow substantially all of this important crop [cotton] from cottonseed that has been enhanced through the introduction of biotechnology traits (''traited cottonseed'')'' (Complaint at 2). Second: ''Today, almost all cottonseed varieties planted in the United States are traited. * * *'' (Complaint at 22). In fact, USDA data show that this is far from the case. First, of the 203 cotton varieties planted in 2006, just 167, or 82%, were traited. The remaining 36 varieties (18%) were conventional varieties. Hence, more than 1 of every 6 cotton varieties was conventional in 2006. Thus, traited cottonseed can by no stretch of the imagination be considered to comprise ''almost all of cottonseed varieties planted in the United States.''

Acreage planted to traited vs. conventional cottonseed breaks down in a similar manner. USDA data report 88% of U.S. cotton acreage planted to transgenic varieties, versus 12% planted to conventional varieties. 12% of the 15 million acres of cotton planted in 2006, or 1.8 million acres, were hence conventional. To say the least, it is difficult to understand how DoJ can claim ''substantially all'' U.S. cotton is produced from traited seed when nearly one in eight acres, comprising almost 2 million acres, is planted to conventional seed.

This overly narrow definition of the relevant product market leads DoJ to neglect several anticompetitive effects of the merger.

*A. Declining Availability of Conventional Cottonseed, Higher Seed Prices*

As noted above, DoJ defines the relevant product market as ''traited cottonseed.'' This definition implicitly ignores the very existence of conventional cottonseed, which forms a significant share of both cotton varieties and acreage planted in the U.S. However, the PJF proposes a partial remedy, albeit in an incidental and unsatisfactory manner, for this sector of the cottonseed market (i.e., conventional cotton varieties) that goes completely unanalyzed in the Complaint and CIS: ''The proposed Final Judgement allows Defendants to continue, for a limited period of time, to sell conventional versions of some of the divested DPL varieties currently being sold by DPL in and outside the United States, *providing for a continuity of supply of conventional cottonseed*'' (PJF, pp. 17–18, emphasis added). The evident need for a remedy expressed in the PJF stands in stark contradiction to DoJ's complete neglect of conventional cottonseed in its definition of the relevant product market in the Complaint and CIS. Because the CIS completely lacks an analysis of conventional cottonseed, and in fact virtually ignores its existence, DoJ has absolutely no basis for proposing, or assessing the adequacy of, the remedy cited above.

In fact, the merger will very likely have a number of serious anticompetitive impacts related to the conventional cottonseed market. First, availability of conventional cottonseed varieties will decline. DPL sold 15 conventional varieties in 2006, 40% of the 36 conventional varieties planted in 2006 (CTA, 3.2). Monsanto intends to reduce the number of conventional varieties offered by DPL, through ''accelerat[ing] biotech trait penetration'' (CTA, 3.2). Secondly, because conventional seed varieties are on average two to four times less expensive than traited seeds (CTA, 3.3, Figure 5, Appendix 3, and related discussion in text), farmers who prefer conventional seeds but cannot find suitable varieties will face substantially increased seed costs. See CTA, 2.4 for further discussion of the merger's adverse impacts on the conventional cottonseed market.

*B. Declining Availability of Less Costly Traited Seeds, Increasing Seed Prices*

A closely related impact of the merger is reduced offerings of cotton varieties with less expensive single vs. more expensive ''stacked'' (two) traits, and reduced offerings of less expensive first-generation vs. more expensive second-generation Monsanto traits. For instance, Monsanto has pledged to ''invest in penetration of higher-margin traits in Delta and Pine Land offerings.'' These proposed changes to DPL's product offerings (with respect to both conventional and traited seeds) are clearly not merely Monsanto's anticipated responses to farmer demand, but are expressions of a Monsanto strategy to increase profits through exercize of market power. These anticompetitive effects of the merger (reduced choices, increased seed prices) are addressed in detail in CTA 2.5, 3.3; Figures 5 & 6, Table 1 and Appendix 3).

**III. DoJ Construes the Relevant Geographic Markets Too Narrowly**

A striking feature of DoJ's settlement documents is the lack of any broader analysis of the cottonseed industry. One searches in vain for some argument or justification to explain DoJ's failure to analyze either (1) the national market in cottonseed; or (2) DoJ's restriction of the relevant geographic markets to the MidSouth and Southeast regions. On the first point, the CIS states clearly that: ''The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition in the market for the development, production, and sale of traited cottonseed * * *'' (CIS, p. 1), without, initially at least, restricting the anticompetitive impacts to specific geographic regions. On the second point, beyond a bare mention of the existence of the Southwest and West geographic markets, neither the Complaint nor the CIS discusses the Defendants' involvement in these markets. Yet despite DoJ's failure to analyze either of these two markets, or the national market, the CIS and PJF propose one remedy that explicitly addresses anticompetitive issues relevant to the national market in cottonseed, thus the Southwest and West markets as well as the MidSouth and Southeast (CIS, p. 21, discussed further below).

In fact, analysis of USDA data show that the Defendants together have a substantial presence in both markets: 29.16% of cottonseed sales in the important Southwest market (which includes Texas, the nation's leading cotton producer); and a still greater 40.51% of sales in the West.[3]

In the Southwest market, the merger would effectively result in Monsanto increasing its market share from 8.04% (Stoneville) to 21.12% (DPL), or an increase of over 2.5-fold. In the West market, Monsanto's post-merger share of cottonseed sales increases 3.6-fold, from 8.80% (Stoneville) to 31.71% (DPL).[4]

[3] USDA AMS 2006, cited above and attached. See Table entitled ''Estimated percentage of upland cotton planted to leading specified brands by growth area, 2006 crop'' p. 3. Note that DPL owns the Paymaster as well as the Deltapine brand. For documentation, see CTA, 2.1.1.

[4] Here, we assume that the market shares cited in the following discussion will not be altered by the Defendants' divestitures beyond that of Stoneville. The additional divestitures (e.g. of 20 DPL lines to Stoneville's acquirer and 43 lines to Syngenta) are

At present, these two geographic markets represent the only cottonseed markets in which the Defendants' competitors have a significant presence. The DoJ's CIS provides absolutely no analysis of how this substantial increase in Monsanto's post-merger market presence in these two important markets would affect competitiveness in the West and Southwest regions.

The concentration in these markets would increase substantially as a result of the merger, especially when considered in combination with Bayer's prospective acquisition of the Enhanced Stoneville Assets. Even without Stoneville, Bayer has a commanding 60.28% share of the Southwest market.[5] With Stoneville, this presence increases to 68.32%, or over two-thirds of the market. In the West, acquisition of Stoneville would increase Bayer's market share from 20.22% (note that Bayer purchased CPCSD in 2006, see CTA, 2.11 for documentation) to 29.02%.

Post-merger, the combined market share of the top two firms in the important Southwest market (which as noted above includes Texas, the nation's largest cotton producer) increases to an astounding 89.44%, and the corresponding market share in the West market to 60.73%. Top 3 market share would become 93.29% in the Southwest, and 96.60% in the West. The post-merger share of the national cottonseed market of just the top two firms rises to 92%, creating a virtual duopoly in cottonseed, with the Defendants controlling roughly 50% of the national market and Bayer controlling 42% (CTA, Figure 1).

Clearly, DoJ was remiss in not analyzing the merger's potential anticompetitive effects in the Southwest, the West, and nationally. The need for such an analysis is clearly indicated by DoJ's proposed remedy to the anticompetitive effects of Monsanto's restrictive licensing practices with third parties, which have allowed Monsanto to terminate licenses granted to cottonseed firms (licensees) which sell cottonseed containing non-Monsanto traits: ''These changes will give these competing cottonseed companies the ability to partner with trait developers other than Monsanto without any financial penalty and to offer traits desired by farmers. Trait developers will thereby have access to close to half of the current U.S. cottonseed market, without having to deal with the combined Monsanto/DPL'' (CIS, p. 21, emphasis added). Without having conducted any analysis of the national market in cottonseed, and having excluded from consideration two important geographical markets, DoJ is in no position to propose, or assess the adequacy of, a remedy that involves consideration of the national market in cottonseed.

The truth of this assertion is brought home by DoJ's reference, in the passage cited above, to ''competing cottonseed companies.'' If DoJ had analyzed the national market, it would have found that there are virtually no ''competing cotton seed companies'' of any size still active, due primarily to numerous acquisitions over the past decades, and particularly the last few years, resulting in an extremely high level of concentration in the cottonseed industry. USDA data show clearly that the number of cottonseed firms with sales appreciable enough to register in its surveys has declined dramatically over the past several decades (CTA, 21.1, Appendices I & 2), and particularly over the last four years: From 19 in 2003, to just 9 in 2006. Accordingly, the number of smaller cottonseed suppliers other than the top three firms (pre-merger) has declined from 16 to just six (CTA, 3.1). In short, DoJ's proposed remedy in favor of ''competing cottonseed companies'' may soon be irrelevant, if the exit of smaller companies from the market continues, and is accelerated by the merger, as appears likely. Clearly, DoJ should have analyzed the merger's potential to accelerate the exit of smaller companies from the cottonseed market, and the associated anticompetitive harms this would likely have (declining choice of cottonseed varieties, increased costs).

## IV. DoJ's PJF Represents an Unwieldy and Unenforceable Conduct-Based Remedy Masquerading as a Structural Remedy Based on ''Divestitures'' of Germplasm

The primary means by which DoJ addresses the anticompetitive harms presented by the merger involves ''divestiture'' of germplasm. DoJ acknowledges the crucial role of germplasm in developing and commercializing cottonseed in the Complaint:

''A company with a large collection of high quality, or elite, germplasm has a competitive advantage because the company has the ability to identify the best genetic material and use it in a wide variety of possible cross combinations, resulting in a greater likelihood of developing a successful variety.'' (Complaint at 5.)

In addition, DoJ recognizes that divesting Stoneville alone would not be sufficient to restore competition lost by the merger Monsanto and DPL (CIS, p. 14). Accordingly, the PJF requires Monsanto and DPL to ''divest'' various lines of germplasm beyond that represented by Stoneville. Below, we discuss a few of the many exceptions and conditions attached to these divestitures of germplasm that render them ineffective as a remedy.

### *A. DPL Germplasm*

DoJ states that: ''Defendants will divest twenty DPL conventional varieties'' (CIS, p. 16). First, only 8 of these 20 varieties are either commercial lines, and/or parents of lines that have been sold commercially. Six of these eight lines are listed as commercially sold varieties in 2006, when they comprised, collectively, just 1.76% of U.S. cotton planted in that year.[6] DoJ makes much of the fact that some of DPL's best-selling cotton varieties were derived, over years of breeding efforts, from four of these eight lines (CIS, p. 16). Yet as DoJ also acknowledges elsewhere, development of successful commercial cotton varieties from even high-quality parental lines can take 8–10 years, and cost tens of millions of dollars. Whether an acquirer will be able to develop commercially successful varieties from such parental lines at all, especially given the presence in the marketplace of successful varieties already developed from them, is extremely uncertain. The time required for breeding work that might result in commercially successful varieties is also uncertain, but could be substantial, and too long to promptly redress competitive harm, as merger guidelines require.

Twelve of the 20 lines are experimental lines with unproven and hence uncertain commercial potential. The acquirer (Bayer) may also lack the requisite expertise with cotton varieties of this type to effectively utilize them in breeding programs.

Still more troubling, Monsanto retains, or has the right to reacquire, substantial rights with respect to these 20 varieties (see Schedule B, Section 2, DPL Germplasm for the following discussion). For instance, Monsanto is entitled to re-acquire an exclusive

described only in relation to the MidSouth and Southeast markets.

[5] USDA AMS 2006, see table cited above. Note that Bayer owns not only the Bayer CropScience Fibermax brand, but also AFD Seed, which it purchased in 2005, and CPCSD (California Planting Cotton Seed Distributors), which it purchased in 2006. For documentation, see CTA, 2.1.1.

[6] See Table B of Schedule B—Enhanced Stoneville Assets. Reference to USDA AMS 2006, cited above, shows that collectively, 00W12 (DP393), Delta Pearl, DP5690, DP491, DP565 and DP5415 comprised 1.76% of U.S. cotton acreage in 2006.

license to sell varieties that are derived or bred from the DPL lines, and also contain only Monsanto traits. Recall that the chief value of these lines is as breeding stock. Secondly, Monsanto retains exclusive rights to sell any of the ''divested'' lines for sale in foreign countries where DPL is currently selling them and retain sufficient quantities of these lines for breeding purposes. Again, Monsanto can continue to breed with lines that DoJ chooses to designate as ''divested.''

Similarly, the ''divestiture'' of ''advanced exotic yield hues'' also comes with numerous strings attached. As with DPL Germplasm, Monsanto may retain ''research quantities'' of these lines ''to enable them to continue their trait development research.'' This exception is particularly curious in that DoJ's rationale for the exceptions (here and elsewhere) is to allow Monsanto ''to retain assets (and research rights to germplasm) that directly relates to trait development, while the advanced exotic yield lines were developed by Monsanto as part of a non-transgenic yield enhancement project; that is, as part of a project that involving traditional, non-biotech breeding work for development of higher-yielding varieties (CIS, p. 14–15). We note also that even DoJ admits that these lines will likely be unsuitable, at least within the term of the PFJ.

Finally, the ''divestiture'' of 43 of DPL's VipCot lines to Syngenta is similarly conditioned. Syngenta's ''exclusive rights'' to commercialize varieties developed from these lines is restricted to varieties that contain one of four traits (see Schedule C). If Syngenta were to develop a new trait not listed in Schedule C, and introgress it into one of these 43 lines, it could no longer commercialize it. This limitation is a significant restriction in light of the extremely high failure rate in agricultural biotechnology (CTA, 3.11, Appendix 7). This condition in effect puts DoJ in the unenviable position of ''picking a winner'' in a field littered with failed development projects. The commercial prospects of any of these 43 lines is also highly uncertain. DPL once promised commercialization of VipCot varieties by 2006 (CTA, 3.4.1). The commercialization date for eight of these lines is now projected for 2009–2011, with the majority pushed off until beyond 2011. These projected commercialization dates are notoriously unreliable, and DoJ's reliance on them as remedies to restore competition is naive.

These are just a few of the many exceptions, exclusions and conditions related to the ''divestiture'' which renders them ineffective as remedies. We would note that such restrictions have two weakening effects. First, they limit the ability of extremely weak competitors to successfully develop competing traited cottonseed varieties in a field in which Monsanto already has overwhelming dominance (as evidenced by its 95–96% market share in traits). Secondly, they provide the virtual monopolist Monsanto with rights to continue to sell certain of the ''divested'' lines, and/or to utilize ''divested'' germplasm in further breeding work, advantages which can only act to consolidate its monopoly position and forestall meaningful competition. For a fuller discussion of the competitive strength of a post-merger Monsanto-DPL, see CTA, 3.10 and Appendix 5.

*B. DoJ's Conduct-Based Remedy Imposes Undue Obligations for Regulatory Oversight, Which DoJ Has Neither Time Nor Resources To Oversee*

The numerous conditions attached to the sharing of rights to ''divested'' germplasm between Monsanto-DPL and Bayer-Stoneville and Syngenta imposes oversight obligations on DoJ which the Antitrust Division is ill-equipped to undertake. For instance, DoJ may be called upon to rule as to whether Monsanto has in fact complied with its obligation to provide Bayer with materials the latter needs to obtain regulatory approval of varieties Bayer develops from Null Lines derived from the ''divested'' advanced exotic yield lines, or as to whether compensation Monsanto seeks from Bayer for this task is in fact ''reasonable'' (Definitions, Null Line). Or, DoJ may have to rule on whether any retention by Monsanto of research quantities of advanced exotic yield lines does or does not adversely affect Bayer (Schedule B, clause 4c). Clause 4d of Schedule B may further require DoJ to police Bayer with respect to acquisition of certain patents, as well as enforce breeding and resale restrictions, in relation to the advanced exotic yield lines. These are just a very few of the oversight and enforcement responsibilities with which DoJ has saddled itself in the PJF. An examination of Schedules reveals many, many more. Not only is DoJ likely unequipped, in terms of expertise, to fairly adjudicate these matters, the resource burdens placed on DoJ in attempting to do so are unacceptable. Finally, the exceedingly complex terms in the PJF provide numerous opportunities for evasion of the terms of the settlement, which could easily subvert the remedies proposed.

**V. Conclusion**

DoJ's PJF is clearly inadequate to remedy the substantial anticompetitive impacts of the proposed merger. We have shown that DoJ has construed the relevant product and geographic markets too narrowly, and thereby failed to account for the merger's likely impact of reducing availability of conventional and less expensive traited cottonseed, thereby leading to reduced seed choices and increased seed costs for cotton growers. Likewise, by ignoring the national and two important regional markets, DoJ has neglected the precipitous decline in competition in the cottonseed industry as a whole that would likely be wrought by the merger, which also promises reduced choices and increased costs for cotton growers.

We have also pointed out the unwieldy, ''regulatory'' nature of this supposed structural remedy, which in fact is an extremely burdensome conduct-based remedy of just the sort that DoJ has neither the resources nor the expertise to police.

Finally, the proposed merger will create an extremely concentrated cottonseed industry dominated by two huge, vertically-integrated players (Monsanto and Bayer) which together will control 92% of the cottonseed market. Monsanto will consolidate and extend its near-monopoly position in cotton traits, with adverse impacts on U.S. agriculture as a whole (CTA, 2.7 to 2.9, 3.10) as well as anticompetitive impacts resulting in fewer choices and higher seed and cotton production prices for America's cotton farmers.

Therefore, we respectfully request the Court to reject DoJ's proposed final judgement as insufficient and contrary to the public interest.

Respectfully Submitted,

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**Cotton Concentration Report**

*An Assessment of Monsanto's Proposed Acquisition of Delta and Pine Land*

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February 2007

Center for Food Safety is a national non-profit membership organization working to protect human health and the environment by curbing the use of harmful food production technologies

and promoting organic and other forms of sustainable agriculture.

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**Table of Contents**

*Executive Summary*
1. Introduction
2. Current Status of the Cotton Industry
2.1 Cotton Industry Already Highly Concentrated
2.1.1 Concentration in cotton seeds
2.1.2 Concentration in cotton traits and research and development
2.1.3 Concentration in cotton farms
2.2 Cotton Seed Price Increase with the Rise of Biotechnology
2.3 Biotechnology Trait Premiums and Added Value
2.3.1 Herbicide tolerance
2.3.2 Insect resistance
2.3.3 Yield
2.3.4 Pesticide use
2.3.5 Summary of added value
2.4 Biotech versus Conventional Seed: Farmers' Choice?
2.5 Single-Trait versus Stacked Cotton
2.6 Biotech Cotton Failures
2.7 Glyphosate-Resistant Weeds
2.8 Glyphosate Use Linked to Plant Disease, Mineral Deficiencies and Reduced Yields; Roundup Toxic to Amphibians
2.9 Inadequate Regulatory Oversight
3. Assessment of the Proposed Merger
3.1 Further Concentration in Cotton Seed
3.2 Declining Availability of Conventional Cotton Seed
3.3. Accelerated Rise in Cotton Seed Prices
3.4 Reduced Availability of Cotton with Non-Monsanto Traits
3.4.1 Cotton with Syngenta's VipCot insecticidal protein
3.4.2 Cotton with DuPont's GAT herbicide tolerance
3.4.3 Other biotech cotton trait R&D
3.5 Production Costs and Productivity of Cropland
3.6 Impacts on Growers of Other Crops
3.6.1 Concentration in seeds and traits other than cotton
3.6.2 Cross-crop trait deployment
3.6.3 Fewer trait choices and adverse impacts on other crops
3.7 Organic Cotton
3.8 Seed Sterility Technology (Terminator)
3.9 International Perspective
3.9.1 Monsanto in India
3.9.2 Monsanto's bribery in Indonesia
3.9.3 Monsanto's questionable soya lawsuits in Europe
3.10 Monsanto-DPL a Virtually Unchallengeable Competitor
3.11 Conduct-Based Solutions in Light of the High Failure Rate in Agricultural Biotechnology
4. Conclusion
5. Recommendations
Bibliography
Figures
Figure 1: U.S. CottonSeed Market Share by Firm: 2006
Figure 2: U.S. Cotton Trait Market Share by Firm: 2006
Figure 3: Number and Average Size of U.S. Cotton Farms: 1987 to 2002
Figure 4: Per Acre Cotton Seed Cost versus Transgenic Share of U.S. Cotton
Figure 5: Technology Fees as Proportion of Cotton Seed Price
Figure 6: Breakdown of Traits in Biotech Cotton in the U.S.: 2006
Figure 7: Number of Conventional and Biotech Cotton Varieties Planted: 2003 to 2006
Figure 8: Percentage of U.S. Cotton Planted to Bayer's Two Top Conventional Lines vs. Biotech Variants of the Same Lines: 2004–2006
Tables
Table 1: Per Acre Cost of Biotech Seed by Trait and Generation
Table 2: Potential for Further Trait Penetration in Cotton Seed
Table 3: Monsanto's Acquisitions Through American Seeds, Inc.: 2004 to 2006
Appendices
Appendix 1: Cotton Seed Market Share of Selected Companies in the U.S.: 1970 to 2006
Appendix 2: Market Share of Four Largest Private Seed Firms: Cotton, Corn and Soybeans
Appendix 3: Cost of Cotton Seed: Conventional versus Biotech
Appendix 4: Average Cotton Yields in the U.S.: 1930 to 2006
Appendix 5: Acreage of Biotech Cotton Field Trials in the U.S.: 2000 to 2006
Appendix 6: Monsanto's Acquisitions and Collaborations
Appendix 7: Approved versus Commercially Grown Genetically Engineered Crops

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**Executive Summary**

On August 15, 2006, Monsanto announced that it would acquire the Delta and Pine Land Company (DPL). DPL is the eleventh largest seed company in the world, sells over half of the cotton seed in the U.S., and holds a pivotal position as the only major cotton seed firm that is not also a biotechnology trait provider. Monsanto dominates the market for biotechnology traits in cotton and other crops, and is also the largest seed firm in the world. The proposed merger deserves close scrutiny, particularly in light of the extraordinarily high degree of concentration already existing in the cotton industry.

*Cotton Industry Already Highly Concentrated Pre-Merger*

*Cotton seed:* Just three firms sell 92% of U.S. cotton seed to farmers (Section 2.1.1, Figure 1, Appendix 1), a much higher concentration than other major crops (Appendix 2)

*Biotechnology traits:* Over 87% of U.S. cotton is biotech. 96% of biotech cotton contains Monsanto traits, and 95% contains only Monsanto traits (Section 21.2, Figure 2)

*Research and development:* Monsanto has similar dominance in R&D for future cotton traits, accounting for 94% of the experimental biotech cotton planted in the U.S. from the year 2000 to present (Section 3.4.3, Appendix 5)

*Cotton farms:* The average size of U.S. cotton farms more than doubled from 1987 to 2002. One of every five cotton farms ceased operations in just the five years from 1997 to 2002 (Section 2.1.3, Figure 3).

*Market Power and Anticompetitive Effects*

*High cost of cotton seed:* The cost of cotton seed has risen 3.4-fold from 1995 to 2005, due primarily to rising technology fees charged for biotech traits (Section 2.2, Figures 4 & 5, Table 1, Appendix 3). The value added by biotech traits does not justify these steep premiums (Section 2.3), as the trend of increasing cotton yield since 1930 has not accelerated during the biotech era (Appendix 4)

*Limited choice:* Farmers have fewer choices of quality conventional cotton seed, and fewer choices of cotton varieties with one trait vs. two, as cotton seed firms and trait providers aggressively pursue ''increased technology penetration'' to maximize profits (Sections 2.4 & 2.5, Figures 7 & 8)

*Agronomic, Environmental Consequences of Monsanto's Trait Monopoly*

*Crop failures:* Monsanto's biotech cotton has failed numerous farmers since its introduction, often resulting in sharp drops in yield. Near-total reliance on any agricultural technology, including one company's limited set of biotech traits, is unwise (Section 2.6)

*Resistant weeds:* The dramatically increased use of glyphosate-based herbicides (e.g. Roundup) associated with Roundup Ready cotton and other crops has fostered a rapid and dangerous development of weeds resistant to the herbicide, a threat to the cotton industry compared by one expert to the boll weevil (Section 2.7)

*Other impacts:* Recent scientific studies suggest that excessive use of glyphosate, which has increased six-fold from 1992–2002, is linked to plant disease, crop mineral deficiencies, reduced yields and (in the case of Roundup) amphibian mortality, and may pose a long-term threat to the productivity of American agriculture (Section 2.8).

*Anticompetitive Effects of the Merger*

*Oligopoly to duopoly?* USDA data show that the number of significant cotton seed firms other than the top three has declined by more than half from 2003 to 2006. Bayer's rising market share since 1999 is concentrated in the Southwest, and has not diversified other regional seed markets. A divested Stoneville may well be uncompetitive and ripe for takeover, possibly resulting in a cotton seed duopoly controlling over 90% of the market (Section 3.1).

*Reduced choice:* Monsanto's commitment to ''increased technology penetration'' would likely lead to accelerated phase-out of DPL's conventional cotton varieties, which comprised 40% of conventional lines planted in 2006, and fewer high-quality ''generation one'' and ''single-trait'' options, reducing choices for farmers (Sections 3.2 & 3.3).

*Increasing cotton seed prices:* Monsanto's pledge to ''invest in penetration of higher-margin traits in DPL offerings'' would accelerate the steep rise in cotton seed prices (Section 3.3, Table 2).

*Consolidation of trait monopoly:* DPL is the only seed firm among the top four (Bayer, MonsantoStoneville, Dow-Phytogen) that is not also a trait provider. Acquisition of DPL by Monsanto would likely result in exclusion of non-Monsanto traits in over half of U.S. cotton, extending Monsanto's current trait monopoly in cotton (Section 3.4) and other crops (Section 3.5) well into the future. It would also exacerbate the adverse agronormic and environmental impacts of trait monopoly in all crops. The high failure rate in agricultural biotechnology means that conduct-based solutions, such as compulsory licensing agreements to force Monsanto to deploy competitors' traits in DPL germplasm, are risky and likely to fail to achieve their competitive ends (Section 3.11).

*Other Likely Impacts of the Merger*

*Organic cotton:* The booming market in organic cotton is threatened by transgenic contamination, herbicide spray drift damage, and potentially by decreased conventional seed availability. The proposed combination would exacerbate such risks for organic cotton growers in the U.S. and overseas, and potentially reduce U.S. consumers' choice of organic cotton products (Section 3.7).

*Seed sterility:* DPL holds major patents on seed sterility technology (i.e. Terminator), a biological means to eliminate the millennia-old farmer's practice of saving and replanting seeds. Monsanto is known for aggressive prosecution of farmers who (allegedly) save its patented seeds. The merger would increase the likelihood that internationally-condemned Terminator cotton and other crops will be introduced, to the detriment of the world's farmers (Section 3.8).

*International impacts:* Monsanto is known for questionable business practices to promote its interests overseas, including illegal actions such as bribery of Indonesian government officials, which resulted in SEC prosecution and a $1.5 million fine in 2002. Acquisition of DPL's substantial international cotton seed business would give Monsanto, already the world's largest seed firm (Appendix 6), additional scope for such activities (Section 3.9).

*Conclusion and Recommendations*

The proposed combination would negatively impact farmers through reduced seed choices, increased seed prices, rising production costs and increased reliance on one company's technology well into the future. The merger would also increase the cotton industry's already near-total dependence on one company's herbicide-tolerance traits, exacerbating glyphosate-resistant weeds and potentially endangering the productivity of American agriculture through the effects of excessive glyphosate use. Finally, acquisition of DPL would invest Monsanto with more power to pursue questionable business practices overseas, and increase the likelihood of introduction of internationally-condemned sterile seed technology.

The Center for Food Safety and International Center for Technology Assessment call on the Department of Justice (DoJ) to unconditionally oppose the proposed acquisition of Delta and Pine Land by Monsanto, and to oppose future acquisitions leading to increased concentration in the cotton seed industry. We also urge the U.S. Dept. of Agriculture to increase funding for public-sector development of affordable, conventional seed varieties neglected by the private sector and to deny applications by entities seeking to field test any seed sterility technology.

1. Introduction

The Center for Food Safety (CFS) and International Center for Technology Assessment (ICTA) have conducted an independent assessment of the proposed acquisition of Delta and Pine Land Company by the Monsanto Company. CFS and ICTA are sister non-profit public interest groups with more than a decade of experience in the legal, agronomic, environmental and public health issues raised by agricultural biotechnology.

On August 15, 2006, the Monsanto Company announced its intention to acquire the Delta and Pine Land Company (DPL) for $1.5 billion in cash (Monsanto 2006a). Monsanto previously attempted to acquire DPL in 1998, but abandoned its bid in December 1999 (Kilman 2006) due to stiff conditions imposed by antitrust regulators (Kaskey 2006). DPL countered that Monsanto did not try hard enough to win approval, and sued the company for $2 billion in damages. The current agreement requires Monsanto to pay DPL up to $600 million if regulatory approvals are not obtained (Pollack 2006). After the transaction was dropped, a Department of Justice official testified that the Antitrust Division would have opposed the merger because it ''would have significantly reduced competition in cotton seed biotechnology to the detriment of farmers'' (Nannes 2001).

Monsanto has proposed to divest its Stoneville cotton seed business in order to gain approval of the merger (Monsanto 2006a). Monsanto first acquired Stoneville in 1997, divested it in 1999 as part of its prior attempt to acquire DPL (Fernandez-Comejo 2004, Table 20, ft. 4), then re-acquired it from Emergent Genetics, Inc. in 2005 (Monsanto 2005b). Stoneville accounts for about 12 percent of the U.S. cotton seed market.

The proposed merger deserves close scrutiny for many reasons, particularly in light of the extraordinarily high degree of concentration already existing in the cotton industry. Delta and Pine Land is the eleventh largest seed company in the world (ETC 2005), the biggest cotton seed firm in the U.S., and holds a pivotal position as the only major cotton seed seller that is not also a biotechnology trait provider. Monsanto dominates the market for biotechnology traits in cotton and other major crops, and is also the largest seed firm in the world (ETC 2005). Our analysis suggests that the merger would result in:

(1) Increased cotton seed prices;

(2) Reduced choice of conventional and some types of biotech cotton seed;

(3) Consolidation of Monsanto's virtual trait monopoly in cotton and other crops well into the future; and

(4) Adverse agronomic and environmental effects, as well as increased production costs, stemming from Monsanto's near-monopoly in herbicide-tolerance traits.

The merger could also result in:

(5) Increased concentration in the cotton seed market;

(6) Harm to organic cotton growers, and reduced choice of organic cotton products for consumers;

(7) Harm to farmers in the U.S. and elsewhere by facilitating the introduction of sterile seed technology (''Terminator''); and

(8) Increased scope for Monsanto to pursue illegal and questionable business activities overseas, to the detriment of the world's farmers.

We first examine the recent history and current state of the cotton industry (Section 2). This helps inform our analysis of the likely impacts of the proposed combination between Monsanto and Delta and Pine Land (Section 3) The conclusion (Section 4) is followed by recommendations (Section 5).

## 2. Current Status of the Cotton Industry

### *2.1 Cotton Industry Already Highly Concentrated*

The cotton industry is by most measures the most highly concentrated of any major crop industry. Below, we briefly discuss four major aspects of this concentration: cotton seeds, biotechnology traits in cotton, research and development for biotechnology traits in cotton, and cotton-growing land.

#### *2.1.1 Concentration in Cotton Seeds*

Over the past 16 years, the market in cotton seeds has become highly concentrated. Appendix I shows some degree of competition from 1970 to 1989, with the top four private suppliers selling from 46 to 70% of total cotton seeds sold to farmers. The ''top four'' market share rose rapidly in the 1990s, reaching the 90% level in 1996. Concentration increased still further from 2000–2006, with just the top three firms—Delta and Pine Land, Bayer and Stoneville—controlling on average 91% of the market. In 2006, the combined market share of the top three stood at 92% (Figure 1). Based on available data, concentration in cotton seed exceeds that in other major crops, such as corn and soybeans, and by a considerable margin (Appendix 2).[1]

Major factors driving this concentration include (see Appendix I and Fernandez-Cornejo 2004, Table 20)):

(1) The virtual disappearance of public sector (university) breeding efforts, from 12–25% of cotton seed sold to farmers in the 1970s and 1980s, to less than 1% today;

(2) Numerous mergers and acquisitions, such as DPL's acquisition of Lankart and Paymaster brands in 1994 (SEC 1996) and Sure-Grow in 1996; and Stoneville's acquisition of Coker Pedigreed Seed and McNair in 1990, Brownfield Seed and Delinting Co. in 2000, and Germain's Cotton Seeds in 2001 (SEC 1997, Stoneville 2001);

(3) The rise of biotechnology and utility patents on biotech traits and plants, which prompted large chemical biotechnology firms to vertically integrate through acquisition of cotton germplasm, as seen with Monsanto's acquisition and re-acquisition of Stoneville in 1997 and 2005; Bayer's acquisition of Aventies CropScience in 2001 (Bayer 2001), AFD Seed in 2005, and California Planting Cotton Seed Distributors (CPCSD) in 2006 (Bayer 2006); and Dow's joint-venture with J.G. Boswell, Phytogen, in 1998 (DFP 2005).

#### 2.1.2 Concentration in Cotton Traits and Research and Development

Biotechnology traits are specific properties conferred on a crop variety through the process of genetic engineering. As shown in Figure 2, the market in biotechnology traits (hereinafter ''traits'') deployed in cotton seed is even more concentrated than the cotton seed market, with the top three trait providers accounting for the traits in l00% of biotech seed planted in 2006. Yet market share is far from evenly distributed even among these few competitors. In 2006, over 96% of biotech cotton planted in the U.S. contained Monsanto traits, and 95% contained only Monsanto traits. Cotton with only Bayer (3.7%) or only Dow (0.06%) traits accounted for less than 4% of biotech cotton, with roughly one percent stacked with traits from Monsanto and either Bayer or Dow.[2]

A graph appearing here in the comment is illegible upon reprinting. The graph is available at the Department of Justice Antitrust Division, 325 Seventh Street, NW., Room 215, Washington, DC 20530, (202) 514–2481, and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

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Interestingly, the market in cotton traits was once at least slightly less concentrated. In 1998 and 1999, Bayer's herbicide-tolerant Buctril cotton (resistant to the herbicide bromoxynil) had a 13% share of biotech cotton (calculated from May *et al.* 2003, Table 1).

Research and development (R&D) efforts are also highly concentrated. Here too, Monsanto has overwhelming dominance, with 94% of experimental biotech cotton acreage since the year 2000 (see Section 3.4.3 and Appendix 5).

#### 2.1.3 Concentration in cotton farms

Finally, the rise of biotechnology in cotton has also been accompanied by accelerating concentration of cotton-producing land in fewer hands. Figure 3 shows a drop in the number of cotton farms from 1987 to 1992, followed by a smaller decline through 1997, the beginning of the biotech era. In just the following five years, the number of cotton farms declined steeply by over 21%, representing a loss of one of every five U.S. cotton farms. Cotton farm size has also risen dramatically, particularly

[1] In this report, we focus on ''upland cotton,'' which accounts for about 97% of U.S. production. The remaining 3% is American Pima or extra-long staple, grown primarily in CaIi[ornia, and used mainly for high-value products such as sewing thread and expensive apparel (USDA ERS 2006a).

[2] Unless otherwise noted, all statistics on conventional and biotech cotton varieties planted from 2003 to 2006 are derived from government data in ''Cotton Varieties Planted'' reports for the relevant year, based on surveys conducted by the U.S. Dept. of Agriculture's Agricultural Marketing Service. See USDA–AMS (2003–2006) in the Bibliography.

since 1997, when the size of the average cotton farm already exceeded that of any other major field crop. In addition, the percentage of cotton farms 500 acres or larger has increased from 12% in 1987 to 29% in 1997 (Meyer and MacDonald 2001).

While, the declining number and increasing size of cotton farms is a long-term historical trend in 1949, 1.1 million presumably mixed crop farms harvested an average of 24 acres of cotton each) (USDA ERS 1996), biotechnology has helped facilitate consolidation over the past decade, as discussed further below.

A graph appearing here in the comment is illegible upon reprinting. The graph is available at the Department of Justice Antitrust Division, 325 Seventh Street, NW., Room 215, Washington, DC 20530, (202) 514–2481, and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

*2.2 Cotton Seed Price Increase With the Rise of Biotechnology*

The increasing use of transgenic cotton since 1995 has been accompanied by a dramatic rise in cotton seed prices paid by farmers. 1-listorical price data from USDA show that the per acre cost of cotton seed has risen 3.4-fold in just the eleven years from the start of the biotech era in 1995 to 2005, when transgenic varieties accounted for 83% of U.S. cotton (Figure 4). The proportion of overall on-farm operating expenses attributable to seed expenditures increased nearly three-fold in the same brief time span (data not shown).

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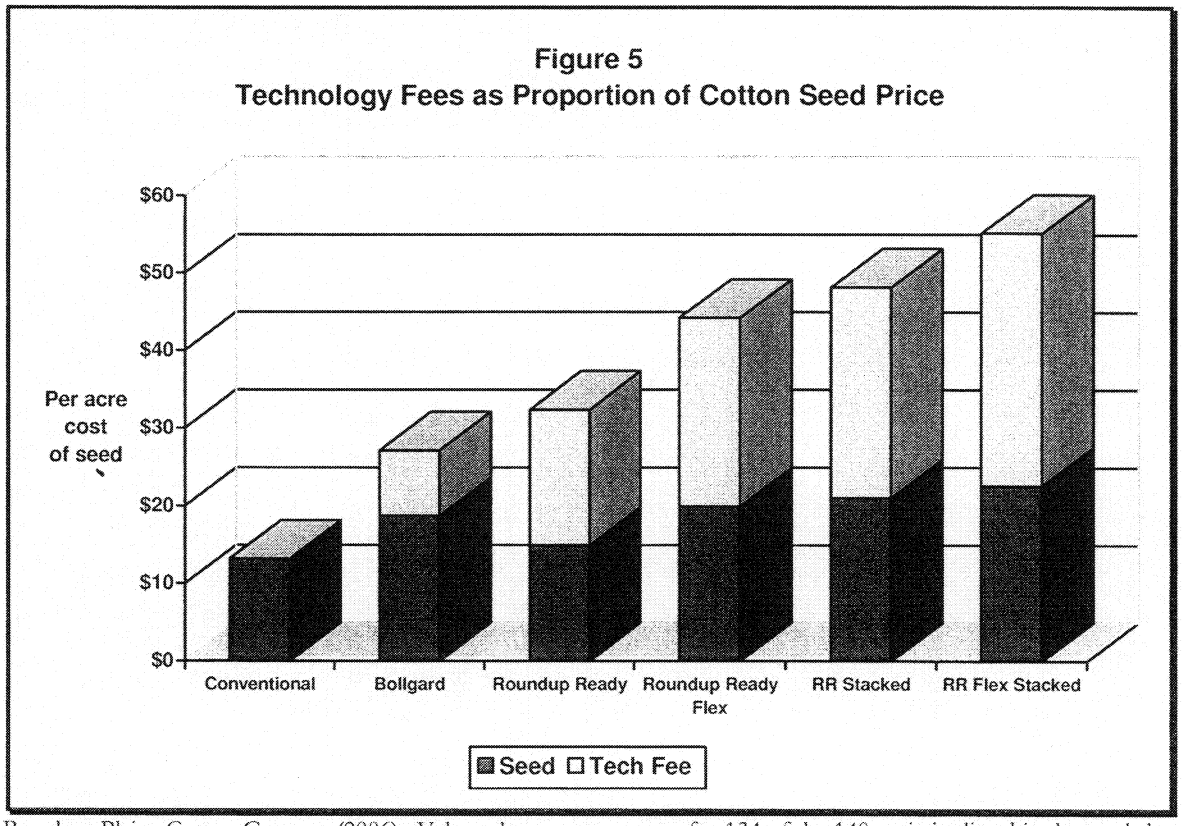
A comparison of present-day prices for conventional and transgenic cotton seed shows that biotech traits are indeed primarily responsible for this rapid price increase. Appendix 3 plots the prices of 140 varieties of cotton seed sold in the Lubbock, Texas area in 2006, broken down by conventional and various biotech trait categories. The data show that the average per acre cost of transgenic cotton seed ranges from two to over four times as much as that of conventional seed. (We will discuss these findings in more detail below.) The price differential is attributable primarily to ''technology fees'' charged by trait providers. Figure 5, based on prices for the same 140 varieties portrayed in Appendix 3, shows that technology fees comprise from 31% to 59% of the overall price paid by farmers for cotton seed. Technology fees increase with a) newer generation traits; and b) number of incorporated traits. Table I shows that the price of cotton seed rises roughly 40% when a second transgenic trait is ''stacked'' with a first and for a variety with second generation versus first generation trait(s).[3] A farmer pays on average nearly twice as much for a second generation variety with two traits as for a first generation variety with one trait.[4] At present, biotech cotton is limited to one or two (stacked) traits, though three or more are possible in the future, as we are starting to see in the corn seed market, with so-called triple-stack corn (Gullickson 2006).

[3] Note that seed prices vary considerably based on numerous factors: Region, time of purchase, package deals with chemicals. etc.

[4] The term ''generation 2'' was originally used to denote promised biotech crops with ''output'' traits desirable to consumers, such as enhanced nutrition, versus ''generation 1'' crops with ''input'' traits of interest to farmers, such as herbicide tolerance (HT) and insect resistance (IR). However, the biotech industry has failed to make a commercial success of any true generation 2 ''output'' trait biotech crop. Monsanto chooses to call its Roundup Ready Flex and Bollgard II traits ''second generation'' even though they are merely variations on the original generation 1 input traits, Roundup Ready and Bollgard.




Based on Plains Cotton Growers (2006). Values shown are averages for 134 of the 140 varieties listed in the worksheet (conventional: 21; Bollgard: 2; RR: 39; RR Flex: 15; RR stacked: 26; RR Flex stacked: 31). The six LibertyLink varieties were excluded because no separate tech fee component was listed for these six varieties.

Cotton seed providers are actively transitioning the cotton varieties they offer from conventional to biotech, from one to two biotech traits, and from first to second generation traits. For instance, the short-term goals cited in a 2004 Delta and Pine Land presentation to investors EDPL 2004, slide 6) are:

*''Increased technology penetration (share, stacked traits vs. single trait);'' and

*''Accelerated transition to MON [Monsanto] second generation traits.''

TABLE 1.—PER ACRE COST OF BIOTECH SEED BY TRAIT AND GENERATION

| | One trait (HT) | Two traits (HT/IR) | Price rise → 2 traits (percent) |
|---|---|---|---|
| First Generation | Roundup Ready, $31.91 | Roundup Ready/Bollgard I, $45.20 | 42 |
| Second Generation | Roundup Ready Flex, $44.02 | Roundup Ready Flex/Bollgard II, $61.90 | 41 |
| Price Rise 1st gen. → 2nd | 38% | 37% | *94 |

Source: Jones, MA (2006). HT = herbicide tolerance; IR = insect resistance. Per acre seed prices based on 38 inch rows and 4.0 seed/ft. Variety not specified. Prices quoted for Virginia, N. & S. Carolina with 25% discount.
*94% signfies the price rise from 1 trait/first generation to 2 traits/second generation.

What is the nature and magnitude of the value added by biotech traits? Does this added value justify the substantial price premiums of biotech versus conventional cotton seed? Is increased technology penetration being driven solely by farmer demand? These questions are addressed in the following two sections.

*2.3 Biotechnology Trait Premiums and Added Value*

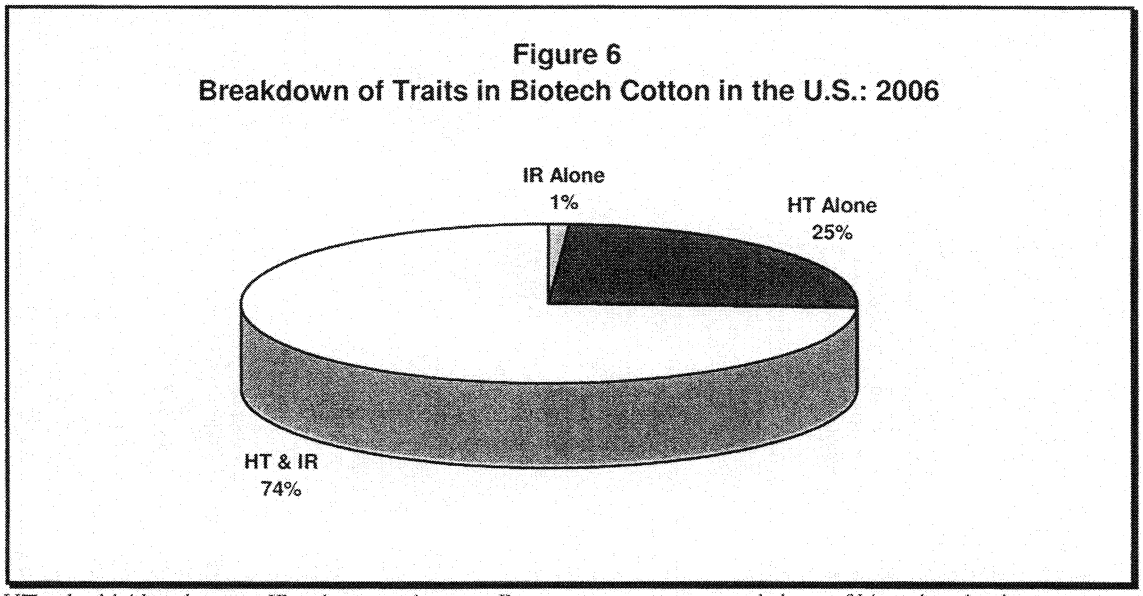
Conventional wisdom has it that the added value of biotech cotton seed fully justifies its two-to four-fold increased price over conventional seed. It is said that farmers wouldn't pay these high premiums if the seeds didn't deliver added value commensurate with their added cost; they would buy conventional seed, instead. However, the extreme concentration in both cotton seeds and traits at least suggests the possibility that market power might be restricting farmers' choice of both conventional and biotech seeds and thus artificially raising prices. An assessment of this possibility, provided in Section 2.4, requires a basic understanding of added value in the context of biotech traits deployed in cotton.

In 2006, almost 88% of U.S. cotton was transgenic (USDA AMS 2006). Nearly three-fourths of transgenic cotton acreage was planted to so-called ''stacked'' varieties modified for both of two traits: Herbicide tolerance (HT) and insect resistance (IR). Varieties with HT alone comprised one-fourth and those with IR alone comprised less than 1%

(Figure 6). HT and IR are the only biotech traits available in cotton.

2.3.1 Herbicide Tolerance

Herbicide tolerance permits the cotton plant to survive application of a single herbicide that would otherwise kill the [non-biotech] plant, thus allowing ''over-the-top'' application of the herbicide to more easily kill nearby weeds without killing or severely injuring the cotton plant itself.[5] HT cotton permits greater flexibility in the timing of herbicide applications, allows for herbicide use over greater time spans, and in general simplifies weed management by reducing the number of different weed killers applied. The chief advantages cited for HT cotton are convenience and ability to cover more acres (i.e. reduced labor inputs per acre) (Duffy 2001), both of which are of particular value to larger farmers (Benbrook 2005, p. 9). Thus, HT cotton has helped facilitate the shift to fewer and larger cotton farms noted above.




HT = herbicide tolerance; IR = insect resistance. Percentages represent total share of biotech upland cotton planted in the U.S. in 2006 to varieties with the given trait(s). Source: USDA AMS (2006).

Monsanto's HT cotton traits, Roundup Ready and Roundup Ready Flex, comprised 96% of HT cotton in 2006. Both Roundup Ready versions are engineered to survive spraying with glyphosate-based herbicides, sold by Monsanto under the name of Roundup.[6] The remaining 4% of HT cotton acreage contained Bayer's LibertyLink trait, which confers tolerance to glufosinate, sold by Bayer under the name of Liberty. Monsanto's dominance in herbicide-tolerant cotton is attributable to three major factors:

(1) The effectiveness of glyphosate, an extremely broad-spectrum herbicide (i.e., it kills a broader range of weed species than most other weed killers), and the popularity of the Roundup Ready system with many farmers;

(2) The low cost of glyphosate, due to Monsanto's ''brilliant strategy of dropping its price years ahead of patent expiration [in 2000] and tying its use to the early growth of genetically modified crops'' (Barboza 2001), as well as subsequent competition from low-cost generic manufacturers of glyphosate;

(3) Aggressive acquisition of high-quality germplasm in which to incorporate its traits, as well as licensing agreements for incorporation of its traits in other firms' germplasm.

The dominance of Roundup Ready cotton has driven a many-fold increase in the use of glyphosate and reductions in the use of other herbicides. The growing reliance on this single herbicide has led to rapid development of glyphosate-resistant weeds, which is beginning to seriously erode the value of this technology (see Section 2.7).

2.3.2 Insect Resistance

Insect resistance involves introduction of a gene encoding an insecticidal protein from a soil bacterium (known as Bt) into the tissues of the cotton plant, and protects cotton from some (but by no means all) cotton pests, thus reducing the use of insecticides. However, the value added by the IR trait is limited by several factors. First, most IR cotton[7] is highly effective only against the tobacco and pink bollworm caterpillars, but only partially effective against ''some of the most damaging insect species,'' such as cotton and American bollworms (May et al. 2003); it provides no protection against other pests such as the boll weevil, stink bugs, plant bugs and mirids (Caldwell 2002). Because farmers continue to spray for these latter pests, IR cotton often provides only a modest reduction in the number of insecticide applications (NAS 1999, p. 114). Secondly, to the extent that insecticide applications are reduced on IR cotton,

[5] ''Over-the-top'' is one form of ''post-emergence'' herbicide application, or spraying after the cotton seed has ''emerged'' or sprouted. The alternative herbicide regime more common with conventional, non-HT varieties is called ''pre-emergence.'' That is, a herbicide that retains its activity for weeks is applied to the soil before the cotton plant actually sprouts so as to suppress ''weed competition'' in the critical early life of the cotton plant. Pre-emergence herbicides are also used, though to a lesser extent, with HT cotton.

[6] Generation I Roundup Ready cotton permits over-the-top application only during the early seedling stage, after which time spray shields are required to direct the herbicide to the base of the plant, so-called ''post-directed'' application. Note that post-directed applications are also used with conventional cotton. Generation 2 Roundup Ready Flex cotton permits over-the-top application of higher doses of glyphosate throughout the growing season (Bennett 2005).

[7] As used here, ''IR cotton'' signifies any cotton with the IR trait; as shown in Figure 6, the IR trait nearly always comes in cotton varieties ''stacked'' with HT.

this ironically often results (over years) in larger populations of the pests not affected by the built-in insecticide, which can then lead to increased chemical applications in later years and erosion or even reversal of the original benefit. For instance, Bt cotton growers in China, who originally benefited through reduced expenditures on insecticides, found themselves applying more (and paying more for) insecticides than non-transgenic cotton growers by year seven due to such secondary pest problems (Connor 2006). Similar problems, though not so severe, have been reported in North Carolina (Caldwell 2002) and Georgia (Hollis 20Q06).

Cotton with Monsanto's Bollgard or Bollgard II cotton traits comprised 99% of IR cotton planted in the U.S. in 2006, with Dow AgroScience's Widestrike accounting for the rest.

2.3.3 Yield

One often hears unqualified assertions that biotechnology increases crop yields. Yet this is simply not the case. As recently noted by a USDA researcher, biotechnology does not increase the plant's genetic yield potential, the only meaningful sense in which such claims could be true:

''Currently available GE [genetically-engineered] crops do not increase the yield potential of a hybrid variety. In fact, yield may even decrease if the varieties used to carry the herbicide-tolerant or insect-resistant genes are not the highest yielding cultivars.'' (Fernandez-Cornejo & Casweli 2006, p. 9)

These higher-yielding cultivars have been developed over decades with conventional breeding. USDA data reveal a nearly four-fold increase in average cotton yield from 1930 to the early years of the biotech era in 1998, due to conventional breeding in combination with the introduction of fertilizers and pesticides (Fernandez-Cornejo 2004, pp. 5–6).[8] Appendix 4 illustrates this trend of increasing yield, and shows that it has not accelerated since 1995, during biotech cotton's rise to dominance, with five years of yield increase offset by six years of yield decline.

Yields of cotton or any crop are influenced by many complex, interacting factors beyond the plant's genetic yield potential. These include soil quality, the amount and timing of rainfall, temperature, severe weather events, insects, weeds and disease. Of great importance, too, is a farmer's management skills and preferences in responding to the particular challenges s/he faces in a given year. Though generalizations are hazardous, studies tend to show that IR cotton has helped farmers reduce yield Losses from damage by bollworms (but not other pests) in some areas and situations where bollworm infestation is heavy (e.g. lower Southern states), but has no yield impact in other areas where bollworms are not so troublesome (e.g. upper Southern states) Likewise, most studies of HT cotton have shown no yield gains, while others suggest lesser yield reductions from weed competition versus conventional varieties (see USDA ERS 2001, pp. 11–12 for a review of studies). Of course, additional income from any increased yield must exceed the additional cost of traits (see Table 1) for biotech seed to be profitable for farmers. This hurdle becomes higher as biotech seed premiums rise with stacked and newer generation traits (Figure 5, Appendix 3).

Farmer preferences are also important. For instance, growers who prefer mechanical tillage and/or pre-emergence herbicides for weed control, or organic methods to control insects or weeds, may find little use for biotech traits, as would growers in areas less plagued by bollworms and weeds. Others who like the traits may still not find them worth the steep premiums, and prefer conventional seeds for cost reasons. Clearly, it is of vital importance for farmers to have access to a wide variety of seeds, including conventional varieties, to meet the particular challenges confronting him/her in any given situation, using the methods s/he prefers.

2.3.4 Pesticide Use

The most comprehensive independent study to date, based on USDA data, demonstrates that adoption of biotech cotton in the U.S. has led to a 3.7% increase in pesticide[9] use on cotton from 1996 to 2004. A decrease in insecticide use attributable to IR traits has been swamped by a bigger increase in herbicide use facilitated by herbicide-tolerance traits (Benbrook 2004, Appendix Table 11). The cost of the increased use of pesticides has been largely offset by the declining price of glyphosate, the chief herbicide used on cotton. The declining cost of glyphosate-based herbicides from 140–45/gallon in the 1990s to 12–16/gallon in 2005–06 (Brown 2006a, slide 46)—is extremely important to keep in mind, as it is largely responsible for steady or declining expenditures on pesticides despite increasing amounts applied as biotech cotton share rises.[10]

Even in the case of IR traits, however, any cost savings from reduced insecticide expenditures must be balanced against the IR trait premium; where bollworm infestation is low, conventional seeds often prove more profitable (Caldwell 2002).

2.3.5 Summary of Added Value

To sum up, biotech cotton has provided added value to many farmers, but this value is highly dependent on the particular region and situation, as well as farmer preference. In general, it can be said that cotton with the HT trait has simplified weed management through greater convenience, lower labor requirements and a decrease in the number of herbicides used. Cotton with the IR trait has slightly reduced insecticide use, and reduced yield losses where bollworm infestation is heavy. Offsetting these advantages are the overall increase in pesticide use, the rise in glyphosate-resistant weeds (Section 2.7), the growing problems with secondary insect pests, and facilitation of the trend to fewer and bigger cotton farms. As discussed further below, the first two problems are exacerbated by near-exclusive reliance on one company's HT traits to the exclusion of other methods of weed control.

These limitations to the value added by biotech traits raise a simple question. Is farmer demand alone responsible for the 88% adoption rate of seeds that cost two to four times as much conventional varieties? Or are other factors at play?

*2.4 Biotech Versus Conventional Seed: Farmers' Choice?*

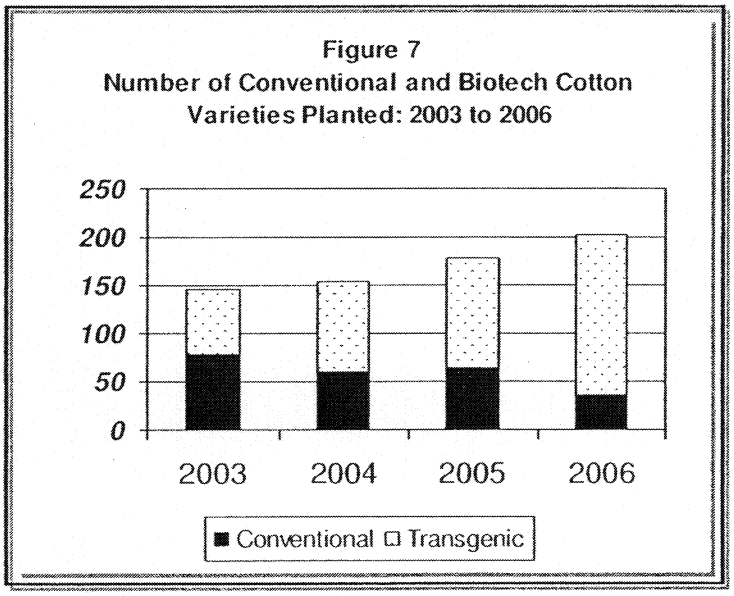
While biotech seeds are popular with many farmers, there is evidence that some growers purchase them for reasons other than added value. For instance, anecdotal reports suggest that some cotton farmers choose Roundup Ready (RR) cotton varieties to protect their cotton from damage due to glyphosate spray drift from an RR cotton-growing neighbor's field (Arax and Brokaw 1997). Given the ubiquity of RR cotton (82% of total U.S. cotton acreage in 2006), this explanation could apply to a large number of RR cotton farmers, who might otherwise choose to grow conventional varieties. Studies simulating glyphosate spray drift

[8] Though it is difficult to disentangle the various factors, by one account 67% of the increased yield of cotton from 1936–1960 was attributable to conventional breeding (see Fuglie et al. 1996, cited in Fernandez-Corneo 2004, pp. 5–6).

[9] The term ''pesticides'' encompasses both herbicides (weed killers) and insecticides.

[10] USDA data show a constant, roughly $60/acre, expenditure on ''chemicals'' applied to cotton from 1997–2005, though these figures appear to be uncorrected for inflation (see USDA ERS 2007b).

confirm that it can damage cotton (Thomas et al. 2005; Lyon & Keeling; Muzzi 2004). Arkansas state officials are considering regulations to minimize glyphosate drift damage to non-RR crops (Bennett 2007). This ''defensive'' reason for purchase of more expensive RR seeds is not added value, but rather a costly consequence of sloppy weed control practices by neighbors. Farmers who buy RR seeds for this reason say they prefer paying the price premium to the time and hassle of paperwork involved in lodging crop insurance claims to obtain reimbursement for spray drift damage to a conventional cotton crop, not to mention the uncertainty of reimbursement.




Source: USDA AMS (2003-2006).

Another explanation given by cotton growers for purchasing biotech cotton is that seed firms are offering fewer and fewer high-quality conventional cotton varieties. This explanation is supported by independent experts. For instance, Donate Miller, associate professor with the Louisiana State University AgCenter, stated that one of the ''bigger problems'' facing cotton growers is that fewer conventional varieties are being developed and released (Bennett 2005). Similarly, Texas cotton consultant Francis Krenek says that some farmers in his area are constrained to use Roundup Ready cotton because in many cases, certain desirable seed varieties are only available in versions that carry the RR trait (PANUPS 2006).

These assessments by farmers and independent cotton experts are confirmed by hard data. First, the number of conventional varieties planted has fallen steeply since just 2003, from 78 to 36. The percentage of planted varieties that are conventional has fallen even more steeply, from 53% in 2003 to just 18% in 2006, reflecting both reduced conventional and increased transgenic cotton seed offerings (Figure 7). This dramatic decline in the availability of conventional seed occurred during a period when the transgenic share of U.S. cotton acreage increased only modestly, from 76% to 88%.

The top three firms (DPL, Bayer and Monsanto's Stoneville) offer a disproportionately small share of the planted conventional cotton varieties, 54% over the past four years, despite seed sales responsible for over 90% of 2006 cotton acreage. For instance, Stoneville's conventional varieties declined from 5 in 2003 to just 2 in 2006, while the number of its planted biotech varieties climbed from 11 to 32 over the same time period. DPL had 21 conventional lines planted in 2003, shrinking to 15 in 2006. The number of planted varieties from Bayer fell from 15 in 2003 to 6 in 2006.[11]

Nearly half the conventional varieties planted from 2003 to 2006 came from smaller suppliers, and the number of smaller cotton seed suppliers (i.e. other than DPL, Bayer and Monsanto's Stoneville) listed in USDA data covering virtually 100% of planted upland cotton has declined from 16 in 2003 to just 6 in 2006. This all portends continuing reductions in the availability of conventional cotton seed.

Equally important is the lower quality of the few conventional varieties that are still being offered. The top firms either do not offer conventional versions of their top-selling transgenic cotton varieties, or only limited supplies of the same. As noted in Section 2.3, biotech traits are limited to herbicide tolerance and insect resistance. All other characteristics—such as boll size, fiber quality, disease resistance, and above all, yield—are properties of the specific germplasm, not biotechnology.[12] This means that farmers who want the desirable, non-biotech attributes of the best varieties (especially high yield) may have no alternative but to purchase costly biotech seed, whether or not they want the HT and/or IR traits at all, or at least at the substantial premium over conventional seeds.

One indication of the lower quality of conventional varieties offered by industry leaders is the steeply falling acreage planted to them. For instance, U.S. cotton acreage planted to all DPL's conventional varieties declined from 6.36% in 2003 to just 1.47% in 2006. Acreage planted to all of Stoneville's

[11] For purposes of comparison, the numbers for Bayer include conventional varieties offered by Bayer (Fibermax) and by AFD Seed in both 2003 and 2006, even though Bayer only acquired AFD Seed in 2005.

[12] This assumes no adverse consequences from the genetic modification process. Actually, there is some suggestive evidence that fiber quality may be lower in certain biotech varieties (Edmisten 2000), but this issue lies beyond the scope of this report and will not be addressed here.

few conventional varieties over the same time period is negligible, roughly 0.3% of U.S. cotton in 2003 to less than 0.1% in 2006. The decline in acreage planted to DPL's and Stoneville's conventional varieties in this four-year period is more than twice as steep as the overall decline in conventional acreage, from 23.78% of U.S. cotton in 2003 to 12.36% in 2006.

Many popular varieties of cotton are offered only in biotech versions. For instance, Stoneville's ST 5599 BR has been a leading variety since at least 2003. ''BR'' designates it as Monsanto's Bollgard/Roundup Ready IR/HT stack; Stoneville does not appear to offer a conventional version of this line (i.e. ''ST 5599'' is absent from USDA data). DPL's enormously popular DP 555 BG/RR (also Bollgard/Roundup Ready) was the top-selling cotton variety from 2003 (8.68% of planted cotton acreage) to 2006 (17.3%). According to University of Georgia cotton expert Steve M. Brown, DP 555 BG/RR is popular chiefly because it outyields other varieties by 100–300 lbs./acre (personal communication). No conventional version of this variety is listed in USDA data, nor is one listed on DPL's Web site. It seems likely that at least some farmers would buy conventional versions of these top-selling cultivars, if only they were made available.

The evidence from other cultivars suggests they would. For instance, in 2006, DPL's conventional lines DP 5415 and DP 5690 were planted on slightly more combined acreage (0.76% of all cotton) than their Roundup Ready counterparts DP 5415 RR and DP 5690 RR (0.67%). Despite this demand, DPL's Web site no longer lists conventional DP 5415 or DP 5690, suggesting they will not be sold in 2007, while the Roundup Ready versions are still being offered.[13] This would be entirely consistent with DPL's goal of ''increased technology penetration.'' A similar comparison is unavailable for Monsanto's Stoneville, because there do not appear to be conventional variants of any of Stoneville's transgenic lines.

Another example comes from Bayer CropScience, the number two supplier of cotton seed with 30% of the U.S. market (Fibermax, AFD Seed and CPCSD brands). Bayer does not feature a single conventional cotton variety in its ''2006 Fibermax Variety Guide,'' merely noting in fine print that three conventional Fibermax lines ''are available for 2006 in limited supply. Please contact your local seed dealer for additional information'' (Bayer Fibermax 2006). It is surprising that Bayer would have limited supplies of these varieties, since two of them were the top-selling conventional varieties offered by any company, planted on 7.14% of U.S. cotton, or over 1 million acres, in 2006.

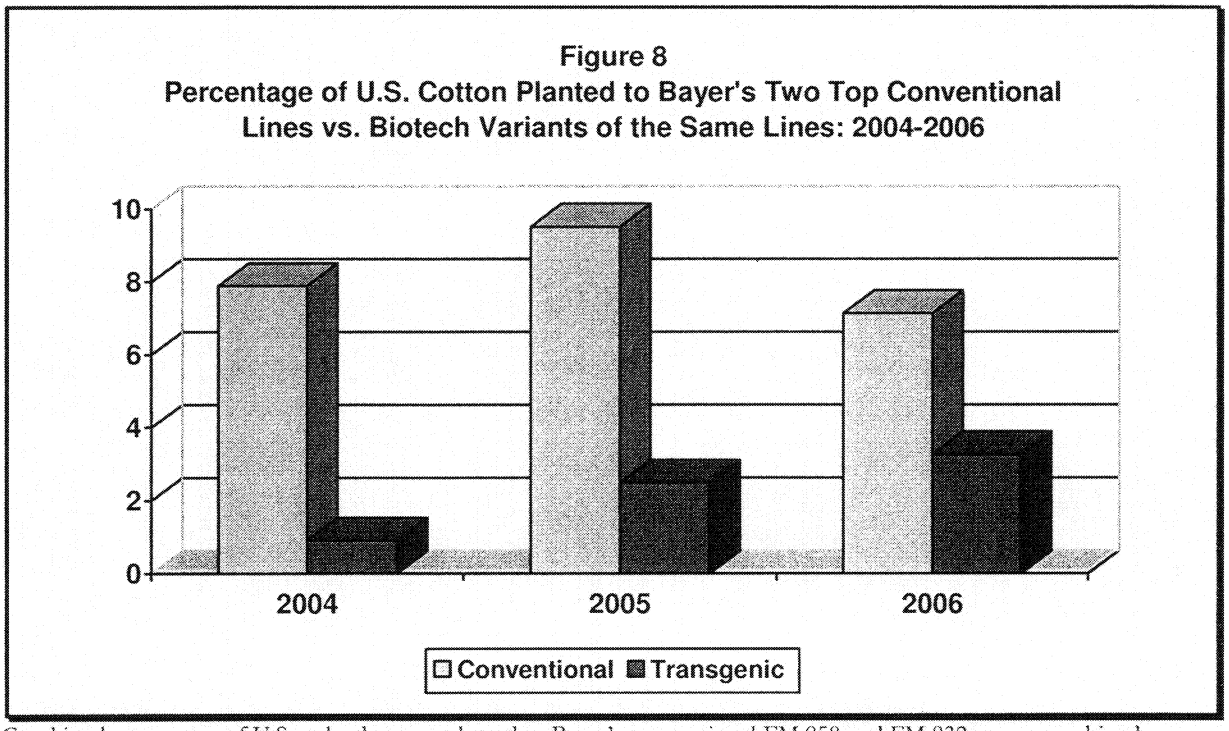
Why would Bayer have limited supplies of these two popular conventional varieties, designated FM 958 and FM 832? One possible explanation is that Bayer did not produce enough seed because it did not expect them to be so popular. Yet this seems unlikely, given the fact that FM 958 and FM 832 represented an even greater share of cotton planted in 2004 and 2005, as shown in Figure 8. Figure 8 also demonstrates that farmers prefer the conventional versions of each line to their biotech variants (FM 958B and FM 832B with the IR trait; FM 958LL and FM 832LL with HT). This strongly suggests that the increasing acreage planted to the biotech variants is attributable to Bayer's intentional limitation of conventional supplies. In other words, farmers who want the desirable properties of FM 958 and FM 832, but cannot obtain the conventional versions due to limited supplies, have no recourse but to purchase the more expensive biotech variants.

Per acre price data show that the herbicide-tolerant biotech variants are nearly twice as expensive as the corresponding conventional versions: $33.26 versus $18.09 for FM 958, and $31.48 versus $17.45 for FM 832 (Plains Cotton Growers 2006).[14]

Together, Bayer (73%) and DPL (13%) account for 86% of conventional cotton acreage. The remaining 14% of conventional cotton seed planted in 2006 was supplied by regional cotton suppliers: Phytogen, mainly in California (7.2%); and All-Tex (2.6%), Americot (2.5%) and Beitwide Cotton Genetics (1.4%), mainly in Texas. These smaller firms, with limited seed varieties adapted to the growing environments of their regional markets, are unlikely to be able to meet farmer demand for high-quality conventional varieties in most areas of the country. The public sector, which once might have met this lower profit margin-market, virtually disappeared in 1992 (see Appendix 1).

[13] For availability, see *http://www.deltaandpine.com* (last accessed 12/28/06). Select ''Cotton Varieties'' tab at the top, then ''conventional'' for each of the given regions to confirm the absence of DP 5415/5690; select ''Roundup Ready'' to confirm that DP 5415/5690 RR are still being offered. For percentages of DP 5415 & 5690 varieties, see USDA AMS (2004.2006). Note that the 0.76% figure for conventional DP 5415/5690 represents over 113,000 of the 14.95 million acres of upland Cotton planted in the U.S. in 2006 (USDA NASS 2007).

[14] Per acre price data were not available for the insect-resistant versions of the two lines.




Combined percentage of U.S. upland cotton planted to Bayer's conventional FM 958 and FM 832 versus combined percentage planted to 2 biotech versions of each line from 2004-2006. Despite the popularity of these two top-selling conventional varieties with farmers, Bayer announced "limited supplies" of both for 2006. Based on data from USDA AMS (2004-2006).

Conventional upland cotton seed was planted on 1.85 million acres in 2006, representing nearly one-eighth of the 14.95 million upland cotton acres planted.[15] Thanks to oligopolistic market power, many farmers may soon have little choice but to plant biotech cotton, whether or not they want biotech traits at all, or at least at the prices at which they are offered. Indeed, it appears this is already happening. The elimination of more affordable conventional cotton seed is not only unfair to farmers, it has troubling implications for the future of the U.S. cotton industry.

*2.5 Single-Trait Versus Stacked Cotton*

Nearly three-fourths of biotech cotton planted in 2006 was stacked with two traits, HT and IR (Section 23, Figure 6). According to some experts, many farmers are being constrained to purchase cotton with two traits when they want only one. Keith Edmisten, associate professor and cotton specialist at North Carolina State University, explains that some of his state's growers would prefer to purchase HT-only cotton,[16] but end up buying HT/IR varieties because the better quality (e.g. higher-yielding) cultivars come only in stacked, not HT-only, versions. University of Georgia cotton expert Steve M. Brown agrees that the available cotton varieties with the Roundup Ready (Flex) trait alone tend to be lower-yielding than stacked Monsanto varieties (personal communications).

DPL and Monsanto are committed to "increased technology penetration" (DPL 2004) and "accelerate[d] biotech trait penetration" (Monsanto 2006b) for "increased returns from technology to the business" (DPL 2004) in other words, higher profit margins. We have discussed several tactics employed by companies to implement this strategy: Phasing out or limiting supplies of desirable conventional varieties, and offering the best cultivars only in biotech versions, or only in stacked versus single-trait versions. As a result, farmers often purchase, and pay more for, technology they do not need or want.

*2.6 Biotech Cotton Failures*

While many farmers have been satisfied with biotech cotton, others have experienced erratic performance. Cotton bearing the traits of market-leader Monsanto has been plagued by numerous failures since the introduction of insect-resistant Bollgard cotton in 1996 and glyphosate-tolerant Roundup Ready cotton in 1997.

For example, farmers in Texas, Oklahoma, Louisiana and Mississippi who planted Bollgard cotton in 1996 were surprised to find that cotton bollworms thrived in up to 50% of their fields, even though the cotton was supposed to be immune to these pests (Lambrecht 1998; Consumers Union 1999). As a result, farmers who had already paid a premium for "bollworm-resistant" cotton had to purchase and spray insecticides, or risk losing their crop (Benson *et al.* 1997). These first Bollgard cotton varieties also exhibited poor germination, late maturity, lower yield, and other defects. The failures were so severe that the cotton growers filed a class action suit against Monsanto; according to the plaintiffs' attorney, Monsanto paid the farmers a substantial sum in an out-of-court settlement (Consumers Union 1999). A

[15] 12.36% of planted upland cotton acreage was conventional (USDA AMS 2006). 14.95 million acres of upland cotton were planted in 2007 (USDA NASS 2007).

[16] The chief reason is that North Carolina farmers must usually spray for stink bugs whether or not their cotton has the JR trait (see Section 2.32), and so would prefer not to waste money on the IR trait premium. In addition, some growers wish to avoid planting "refuges" of non-IR cotton, a requirement for growers of IR cotton imposed by the Environmental Protection Agency to slow development of insects resistant to the built-in insecticide(s).

second generation of Bt cotton (Bollgard II) with better resistance to bollworms was introduced in 2003. Yet Bollgard II cotton varieties are predicted to facilitate increased infestations of pests unaffected by the built-in insecticides, such as stink bugs (Yancy 2004).

Roundup Ready (RR) cotton has also failed farmers repeatedly. In 1997, growers in Mississippi, Arkansas, Tennessee, Louisiana, Texas and Missouri reported that the cotton-bearing boils on their RR cotton simply dropped off, or were deformed, causing substantial yield losses (Lambrecht 1998; Chattanooga Times 1997; Kerby Voth 1998). The director of Mississippi's Bureau of Plant Industry, Robert McCarty, stated that only Monsanto varieties seemed to fail, over an area totaling 30,000 acres (Meyerson 1997). While Monsanto blamed cold, wet weather for the cotton failures, arbitrators at the Mississippi Seed Arbitration Council decided otherwise, issuing a non-binding resolution calling on Monsanto to reimburse three farmers $194 million for their damages (NYU 1998), which Monsanto refused to do (Steyer 1998). Monsanto and Delta and Pine Land eventually pulled five varieties of Roundup Ready seed due to substandard quality (Lambrecht 1998), and Monsanto paid 55 Mississippi growers an estimated $5 million in compensation (NYU 1998).

In 1998, 190 growers in Georgia, Florida and North Carolina reported similar problems with Roundup Ready cotton (Augusta Chronicle 1999, Edmisten 1998). Andrew Thompson of Georgia reported losing nearly a quarter of his crop, costing him 250,000.

Farmers and cotton experts say Monsanto rushed its RR cotton to market, without giving university researchers (May *et al.* 2003, p. 1596) or even a USDA scientist opportunity to test it. USDA geneticist William Meredith was denied seeds to test at a government lab, because in order to obtain the seeds, he would have had to sign an agreement with Monsanto not to test them. ''You need a good referee in the ball game, which is what I am,'' he reportedly said. ''But some of the Monsanto people thought they knew all they needed to know about cotton'' (as quoted in Lambrecht 1998).

In 2005, there were once again widespread yield losses with Roundup Ready cotton, this time in Texas (PANUPS 2006). Many of the cotton bolls fell off, others were misshapen, still others didn't open before harvest, and so could not be picked by machine. These are all symptoms of Roundup damage, and scientists have confirmed that under certain conditions RR cotton is not immune to glyphosate (Cerdeira & Duke 2006). As with the failures of Bollgard cotton cited above, farmers experienced double losses: From payment of large premiums for a non-performing trait, and lost income from large drops in yield. These farmers also filed suit against Monsanto to recover their losses; at this writing, the outcome is still pending.

There are likely many more incidents of this sort that have gone unreported by farmers. Defective RR cotton that is damaged by Roundup early in the season may recover later, and in some cases yield may not be affected (Jones & Snipes 1999). Monsanto also has a program to reimburse farmers for defective cotton, but only when stringent conditions are met. While these conditions vary by region and seed supplier, they can include having planted at least 70% of one's total acreage with cotton bearing Monsanto's trait(s); near total loss of the crop (yield < 150 lbs./acre, or less than one-fifth the 2006 national average yield of 798 lbs./acre), and exclusive use of Monsanto's more expensive Roundup brand of glyphosate (Smith 2004). Many farmers who do not meet these conditions have likely suffered losses without compensation. Substandard performance and outright failure of Monsanto biotech cotton has been frequently reported in India and Indonesia as well (see Section 3.9).

Other Roundup Ready crops have exhibited similar problems. For instance, RR soybeans have been observed to perform poorly during hot, dry conditions, and are more subject to ''stem-splitting'' (Coghlan 1999), which can result in higher yield losses relative to conventional soy. In both Brazil and Paraguay, RR soy was reported to suffer greater yield losses than conventional soy during drought conditions over the past two years (FoE International 2007). Benbrook (2001) discusses a number of additional agronomic problems with RR soybeans.

The sometimes erratic performance of biotech cotton and other biotech crops underscores the need to maintain vigorous breeding programs for continued production of high-quality conventional seed, which as described above is on the decline.

### *2.7 Glyphosate-Resistant Weeds*

Monsanto provides the traits deployed in 95–96% of U.S. transgenic cotton (Figure 2), representing 82–83% of U.S. cotton overall. Such extreme market power is undesirable in any industry, as it tends to hamper innovation, restrict choice and raise prices. In agriculture, however, this high degree of concentration can also have grave agronomic consequences. In this and the following section, we discuss the adverse effects of increasing reliance on use of a single herbicide, glyphosate, fostered by Monsanto's virtual monopoly in transgenic cotton traits.

Farmer adoption of glyphosate-tolerant, ''Roundup Ready'' cotton has led directly to a 753% increase in glyphosate use on cotton in the U.S. from 1997 to 2003 (Steckel et al 2006) Just as overuse of an antibiotic breeds resistant bacteria, so overuse of glyphosate has spawned rapidly growing populations of weeds the chemical is no longer able to kill, except perhaps at greatly increased rates of application.

North Carolina weed scientist Alan York has called it ''potentially the worst threat (to cotton) since the boll weevil,'' the devastating pest that virtually ended cotton-growing in the U.S. until an intensive spraying program eradicated it in some states in the late 1970s and early 1980s (Minor 2006). And York isn't alone. University of Georgia weed scientist Stanley Culpepper has found over 100,000 acres of Georgia cotton infested with glyphosate-resistant pigweed that survives up to twelve times the normal rate of Roundup (Laws 2006c).

Glyphosate resistance in weeds has developed with incredible rapidity over just six years, corresponding with the period of widespread introduction of Roundup Ready cotton and soybeans. In contrast, there was only one confirmed glyphosate-resistant weed in the U.S. in the 22 years from 1976, when Monsanto first introduced the chemical in the U.S. (Monsanto 2007), through 1998.[17] Concern began building in 2001, when a farm journal reported:

> ''Resistance to glyphosate (Roundup) is emerging all around the world, potentially jeopardizing the 25 billion dollar market for genetically modified herbicide tolerant crops'' (Farmers Weekly 2001).

According to a joint statement by ten prominent weed scientists (Boerboom *et al.* 2004):

> ''It is well known that glyphosate-resistant horseweed (also known as marestail) populations have been selected in Roundup Ready soybean and cotton cropping systems. Resistance was first reported in Delaware in 2000, a mere 5 years after the introduction of Roundup Ready soybean. Since that initial report, glyphosate-resistant horseweed is now reported in 12 States and is estimated

[17] The sole resistant weed by 1998 was rigid ryegrass in California. See Web site of The Weed Science Society of America. *http://www.weedscience.org/Summary/UspeciesMOA.asp?lstMOAID=12&FmHRACGroup=Go*

to affect 1.5 million acres in Tennessee alone.''

The list of confirmed glyphosate-resistant weeds in the U.S. now stands at seven, with the latest addition (giant ragweed) reported in January 2007 (Ohio Farm Bureau 2007). A number of additional weed species are under investigation for resistance (Roberson 2006), and the acreage affected is growing rapidly. An online farm journal recently devoted an extensive special edition, with contributions from leading weed scientists across the country, to glyphosate-resistant weeds (Crop News Weekly 2006).

Farmers have several options to deal with such weeds They can:

(1) Apply more glyphosate (resistance is not an all-or-nothing phenomenon, and is defined as the ability to survive the normal rate of herbicide application, not absolute immunity).

(2) Switch to an herbicide with a different ''mode of action''.

(3) Stop planting Roundup Ready crops and applying glyphosate every year in order to lessen the ''selection pressure'' that accelerates development of glyphosate-resistance.

(4) Switch [from no-till or conservation tillage to conventional tillage.

Option 1—using more glyphosate—is probably the most common response. While this can be effective in the short-term, it leads to a vicious cycle of escalating resistance, followed by still more glyphosate use. Monsanto's introduction in 2006 of a ''second generation'' Roundup Ready cotton known as Roundup Ready (RR) Flex may well facilitate this misguided approach. RR Flex is engineered to withstand higher application rates of Roundup than first generation RR cotton, and to permit application throughout the growing season, rather than only in the early growth stages as with original RR (Bennett 2005). Producers who adopt RR Flex cotton in the hopes of better controlling resistant weeds will not only pay for more glyphosate, but also spend roughly 40% more for RR Flex (see Table 1).

Weed scientists recommend use of different herbicides (option 2) to stem development of resistant weeds, but often in combination with heavier applications of glyphosate (Yancy 2005). An Arkansas weed scientist estimated that the state's growers would have to spend as much as $9 million to combat glyphosate-resistant horseweed in 2004 (AP 2003). The alternative is even more expensive. Left unchecked, horseweed can reduce cotton yields by 40–70%. Larry Steckel, weed scientist at the University of Tennessee, estimates that on average, glyphosate-resistant pigweed will cost cotton growers in the South an extra $40 or more per acre to control (Laws 2006a). This represents a substantial burden, as cotton farmers' average expenditure on all pesticides (insecticides and herbicides) was $61 per acre in 2005 (USDA ERS 2007b).

Option 3—reducing glyphosate use through growing non-RR cotton or non-RR crops in rotation with RR cotton—is also recommended (Yancy 2005), but is becoming progressively more difficult with the declining availability of quality conventional seed,[18] and the continuing paucity of non-RR biotech varieties. The only non-RR HT trait planted commercially is Bayer's LibertyLink (LL).[19] Only nine varieties of LL cotton were planted in 2006, representing only 4% of cotton acreage, versus a total of 149 varieties with RR or RR Flex, comprising 82% of U.S. cotton.

Option 4 is to physically remove the weeds through mechanical tillage or hand weeding. Mechanical tillage, once common, has been on the decline for years as farmers switch to ''no-till'' or conservation (minimal) tillage practices in order to reduce labor costs and fuel expenditures, as well as decrease the soil erosion that often accompanies plowing. The rise of glyphosate-resistant weeds is beginning to reverse this trend.[20] For instance, acreage under conservation tillage in Tennessee dropped by 18% in 2004, as farmers turned back to the plow to control glyphosate-resistant horseweed; Tennessee counties with the largest cotton acreage experienced the largest decline in conservation tillage, from 80% to just 40% (Steckel et al. 2006). It is estimated that resistant horseweed has reduced the area under conservation tillage in Arkansas by 15%, with similar trends reported in Missouri and Mississippi (Ibid). In particularly bad cases of glyphosate-resistant pigweed in Georgia, the necessity of hand-weeding can cost growers $92 an acre (Laws 2006a).

The over-reliance on a single herbicide fostered by Monsanto's near-monopoly in cotton traits is confronting cotton and other growers with an extremely serious agronomic problem. Aside from non-chemical weed control methods used in organic cotton production, the only real solution is use of herbicides other than glyphosate. But this is unlikely as long as glyphosate-tolerant, Roundup Ready cotton comprises over 80% of U.S. cotton. In fact, over-reliance on Roundup Ready crops and glyphosate has dampened research into new herbicides, meaning none are on the horizon (Mueller et al. 2005, p. 925; Yancy 2005). Meanwhile, growers will increasingly turn to older, more toxic herbicides, such as paraquat and 2,4–D, to control glyphosate-resistant weeds (Roberson 2006).

A growing body of research suggests other serious consequences of farmers' growing dependence on glyphosate and Roundup Ready crops.

### *2.8 Glyphosate Use Linked to Plant Disease, Mineral Deficiencies and Reduced Yield; Roundup Toxic to Amphibians*

Overall glyphosate use in the U.S. increased six-fold from 1992 to 2002, due largely to the widespread introduction of Roundup Ready soybeans and cotton (Cerdeira & Duke 2006, p. 1633); area planted to Roundup Ready corn is growing as well (Monsanto 2006c). RR versions of these crops are increasingly grown in rotation, meaning that each year, more prime cropland is sprayed more frequently with glyphosate, with increasing rates applied in many areas to control resistant weeds. While glyphosate is generally regarded as less toxic than many weed killers, a growing body of research suggests that continual use of this chemical may make RR plants more susceptible to disease and prone to mineral deficiencies than conventional crops, as well as reducing their yields. In addition, recent studies suggest that Roundup is much more toxic to amphibians than previously thought.

When Roundup is sprayed on RR crops, much of the herbicide ends up on the surface of the soil, where it is degraded by microorganisms. However, some is absorbed by the plant and distributed throughout its tissues. Small amounts of glyphosate ''leak'' from the roots of RR plants and spread throughout the surrounding soil (Motavalli et al. 2004; Krerner et al. 2005; Neumann et al. 2006). This root zone is home to diverse soil organisms, such as bacteria and fungi, that play

[18] While farmers of course could grow RR cotton without using glyphosate, it would represent wasted expenditure on the premium (technology fee) paid for the trait. In other words, payment of the premium is a strong inducement to make use of the trait through application of glyphosate.

[19] USDA data list two varieties of bromoxynil-tolerant cotton in 2006, one from Stoneville and one from Bayer, but their aggregate acreage amounted to less than 0.05% of U.S. cotton. Stoneville reportedly retired all of its bromoxynil-tolerant cotton seed offerings after the 2004 season (Robinson 2004).

[20] Some attribute the rise of conservation tillage to adoption of RR crops, yet a USDA expert notes that the steep rise in conservation tillage (at least in soybeans) came from 1990–1996, before their introduction, and that the share of soybean acres grown with conservation tillage stagnated after 1996 (Fernandez-Cornejo & McBride 2002, p. 29).

critical roles in plant health and disease; and it is also where the roots absorb essential nutrients from the soil, often with the help of microorganisms.

The presence of glyphosate in the root zone of RR crops can have several effects. First, it promotes the growth of certain plant disease organisms that reside in the soil, such as Fusarium fungi (Kremer et al. 2005). Even non-RR crops planted in fields previously treated with glyphosate are more likely to be damaged by fungal diseases such as Fusarium head blight, as has been demonstrated with wheat in Canada (Fernandez et al. 2005). This research suggests that glyphosate has long-term effects that persist even after its use has been discontinued. Second, glyphosate can alter the community of soil microorganisms, interfering with the plant's absorption of important nutrients. For instance, glyphosate's toxicity to nitrogen-fixing bacteria in the soil can depress the absorption of nitrogen by RR soybeans under certain conditions, such as water deficiency, and thereby reduce yield (King et al. 2001). Some scientists believe that this and other nutrient-robbing effects may account for the roughly 6% lower yields of RR versus conventional soybeans (Benbrook 2001).

Other research shows that Roundup Ready crops themselves are less efficient at taking up essential minerals such as manganese through their roots (Gordon 2006), and that glyphosate inside plant tissues can make such minerals unavailable to the plant (Bernards et al. 2005). The resultant mineral deficiencies have been implicated in various problems, from increased disease susceptibility to inhibition of photosynthesis.

While much of this research involves RR crops other than cotton, similar impacts are likely with cotton, given the heavy use of glyphosate common to all RR crops. In addition, it should be recalled that many farmers rotate RR cotton with RR soy and to a lesser extent with RR corn.

Finally, recent studies (Relyea 2005a, 2005b) demonstrate that common versions of Roundup herbicide that contain a surfactant (i.e. POEA, or polyethoxylated tallowamine) to aid penetration of the active ingredient (glyphosate) into plant tissue are extremely toxic to the tadpoles and juvenile stages of certain species of frogs, killing 96–100% of tadpoles after three weeks exposure and 68–86% of the juveniles after just one day.

*2.9 Inadequate Regulatory Oversight*

While the U.S. Dept. of Agriculture's Animal and Plant Health Inspection Service (APHIS) is primarily responsible for assessing the potential environmental impacts of biotech crops, it has by many accounts failed to do its job. A National Academy of Sciences committee identified numerous regulatory deficiencies in 2002 (NAS 2002), and since then several federal courts have ruled against APHIS for failure to adhere to U.S. environmental laws with respect to biotech crops (e.g. *CFS et al.* vs. *Johanns et al.* 2006; *CTA et al.* vs. *Johanns et al.* 2007). In February 2007, the U.S. District Court for Northern California ruled that APHIS must perform an environmental impact statement on Roundup Ready alfalfa, which APHIS de-regulated in 2005 despite having failed to prepare one. Among the Court's concerns was the potential for RR alfalfa to increase the prevalence of glyphosate-resistant weeds, a concern that APHIS ignored:

> ''The Court notes, however, that it is unclear from the record whether any federal agency is considering the cumulative impact of the introduction of so many glyphosate resistant crops; one would expect that some federal agency is considering whether there is some risk to engineering all of America's crops to include the gene that confers resistance to glyphosate'' (*Geertson Seed Farms et al.* v. *Johanns et al.* 2007, pp. 16–17).

The growing dependence of American farmers on the use of glyphosate poses long-term risks to the productivity of U.S. agriculture and the environment, risks which U.S. regulators are largely ignoring. There is little hope of breaking this dangerous dependence as long as Monsanto maintains a near-monopoly in transgenic HT traits with its Roundup Ready crops.

3. Assessment of the Proposed Merger

To assess the impacts of the merger, one must compare the likely effects on the cotton seed and traits industry of DPL as a subsidiary of Monsanto versus as an independent entity, informed by an analysis of existing trends, as described above.

In our view, the merger must be evaluated in terms of its potential impacts on: (1) Concentration in cotton germplasm; (2) Availability of quality conventional seed; (3) Cotton seed prices; (4) Concentration in biotech traits; (5) Production costs and the productivity of American cropland; (6) Growers of other major crops; (7) Grower and consumer choice for organic cotton seeds and products; and (8) Introduction of DPL's seed sterility technology, known as Terminator. We also believe that potential international impacts of the merger deserve consideration. Finally, we will discuss the feasibility of conduct-based solutions to address anti-competitive effects of the merger.

*3.1 Further Concentration in Cotton Seed*

As discussed in Section 2.1.1 and portrayed in Appendix 1, concentration in the cotton seed market has increased dramatically since 1970, and especially since the early 1990s. Top four market share reached 90% by 1996, while top three market share has averaged 91% since the year 2000. Despite these facts, some still try to argue that there are more competitors in the cotton seed market today than in 1998, when Monsanto first attempted to acquire DPL, and imply that the merger should be permitted for this reason (e.g. Leonard 2006). This argument is without merit for several reasons. First, it seems to rest exclusively on Bayer's rising market share since 1999. Yet competitiveness is not ensured by having three rather than two firms controlling 90% or more of the national market. More relevant is that the number of smaller suppliers (i.e. other than DPL, Bayer and Stoneville) with sales appreciable enough for listing in USDA data fell by more than half in just the last four years, from 16 in 2003 to 6 in 2006.[21] Second, Bayer's seed sales are concentrated heavily in the Southwest, particularly Texas, and thus the company's rising market share has done little or nothing to increase competition in other regions. Indeed, DPL's market share in the importation Southeastern (SE) and South Central (SC) markets[22] has actually increased during the years of Bayer's rise, from 81% (SE) and 61% (SC) of acreage planted in 2003 to 86% (SE) and 73% (SC) in 2006.

Another argument presented by proponents of the proposed acquisition is that it would not change overall market concentration, provided

[21] Based on USDA AMS reports, 2003–2006, which lists market share by brand rather than supplier. The number of suppliers is arrived at by subtracting brands known to be owned by another supplier. Of 21 brands listed in 2003, Paymaster and Sure-Grow are owned by DPL, leaving 19 suppliers, or 16 other than the top three. Of the 13 listed brands in 2006, we subtract Paymaster and Sure-Grow as well as AFD Seed and California Planting Cotton Seed Distributors (the latter two purchased by Bayer in 2005 and 2006, respectively) to arrive at 9 suppliers, or 6 suppliers other than the top three. Note also that USDA AMS figures show generally declining market share for the ''Miscellaneous'' category comprising all suppliers too small for listing in its reports: From 1.36% of upland cotton acreage planted in 2003 to just 0.68% in 2006.

[22] The Southeastern market comprises Alabama, Florida, Georgia, N. & S. Carolina and Virginia. The South Central market comprises Arkansas, Louisiana, Mississippi, Missouri and Tennessee.

Monsanto divests Stoneville (Leonard 2006). This assumes, however, the viability of Stoneville as an independent entity. Sandy Stewart, Associate Professor and Extension Cotton Specialist with the Louisiana State University AgCenter, has questioned whether a divested Stoneville would be competitive in 2008 (Laws 2006b). Without the advantage of affiliation with the world's largest seed and traits firm, Stoneville might well be ripe for takeover. The history of the cotton seed industry is rife with takeovers (Appendix 1). Stoneville could succumb to the fate of Lankart, Paymaster, Sure-Grow, AFD Seed and others. For instance, in 1993, Paymaster's 29% market share in cotton seed was more than double Stoneville's current 12%. DPL acquired the company the following year. If the merger goes through, Stoneville might well become an attractive target for Bayer, which has acquired at least two cotton seed firms in the past two years. If Bayer were to acquire a divested Stoneville, the virtual oligopoly of three in cotton germplasm would become a duopoly: Monsarito-DPL would control 51%, and Bayer-Stoneville 42%, of the cotton seed market, for a top two market share of 93%. This enhanced market power would likely hasten the already precipitous exit of smaller cotton seed firms from the market.

*3.2 Declining Availability of Conventional Cotton Seed*

The discussion above clearly shows a decline in the number and quality of conventional cotton seed varieties planted, despite continued demand from farmers. Among the top three, Monsanto's Stoneville has gone furthest in purging conventional cotton lines from its offerings, with only two varieties planted to negligible acreage in 2006. These two unpopular varieties represent only 6% of 34 planted Stoneville varieties, whereas conventional varieties comprise a more than 3-fold larger share of planted varieties from other cotton seed firms. Judging by its conduct with Stoneville, it seems reasonable to assume that post-merger, Monsanto would similarly reduce the number of conventional seed varieties offered by DPL. This assumption is strengthened by Monsanto's announced strategy, in a presentation to investors on the DPL acquisition, to ''accelerate biotech trait penetration'' (Monsanto 2006b). Increased trait penetration would come at the expense of conventional seed offerings. Given the fact that DPL's 15 non-transgenic lines comprise over 40% of conventional cotton varieties planted in 2006, the merger would likely further restrict farmers' ability to choose quality conventional cotton seed.

*3.3 Accelerated Rise in Cotton Seed Prices*

As discussed above, cotton seed prices have risen dramatically with the advent of biotechnology. Relative to industry-wide figures for 2006, Stoneville offers slightly higher percentages of the highest price seed categories—stacked varieties and varieties with 2nd generation traits (data not shown)—both of which increase the average price of its seed (see Figure 5 and Table 1). In its presentation to investors, Monsanto announced its intention to ''invest in penetration of higher-margin traits in Delta and Pine Land offerings'' (Monsanto 2006b). Since DPL currently sells more than four times as much cotton seed as Stoneville, Monsanto's pursuit of this policy with an acquired DPL would lead to an acceleration of the already steep rise in cotton seed prices.

**Table 2: Potential for Further Trait Penetration in Cotton Seed**

| | Type of Cotton Seed | | | | | | |
|---|---|---|---|---|---|---|---|
| | Conventional (no traits) | One trait | Two traits | Only generation 1 trait(s) | Only generation 2 trait(s) | Mixed generation 1 and 2 traits | Non-Monsanto single trait |
| % of 2006 acreage | 12.36 | | | | | | |
| % of 2006 biotech acreage | | 25.90 | 74.09 | 78.17 | 8.13 | 9.94 | 3.76 |
| TOTALS | | 100% | | 100% | | | |

Calculated from data in USDA AMS (2006).

The potential for seed price increases can be gauged by breaking down the composition of 2006 cotton acreage by: (a) Conventional versus biotech; (b) one versus two traits; and (c) generation 1 versus generation 2 traits (Table 2). First, replacement of conventional varieties with biotech cultivars offers the greatest per unit potential for increasing profit margins/prices, since no tech fees at all are collected on these seeds. As shown in Appendix 3 and Figure 5, single-trait cotton seed is on average twice the price, and stacked cotton roughly four times the price, of conventional seed. Second, the potential for increasing prices through trait stacking is limited, but still substantial, with 26% of 2006 biotech cotton acreage from seeds bearing just one trait. As shown in Table 1, companies charge roughly 40% more for seed with two traits versus just one. The greatest potential for increasing the price of cotton seed, however, lies in replacement of popular first-generation traits with their second-generation counterparts (this applies only to Monsanto), which also entails a price increase of roughly 40% (Table 1). Bollgard II was introduced in cotton in 2003, Roundup Ready Flex in 2006 (Monsanto 2007). 78% of 2006 biotech cotton acreage was planted to varieties containing only generation I trait(s), 8% to those with only second-generation trait(s), and 10% to stacked varieties with mixed generation 1 and 2 traits. Replacement of first generation with higher-margin second-generation traits in seeds planted to upwards of 78% of biotech cotton acreage represents a large profit potential, which as indicated above Monsanto intends to exploit postmerger in DPL cotton seed offerings.

Another portent of increased seed prices is provided by University of Georgia cotton expert, Steve Brown, who already predicts cotton seed prices rising from $44 to a range of $80–$120 per acre (Brown 2006a, slide 46). It is unclear whether or not this $80–$120 figure accounts for the price-increasing effects of the proposed combination.

*3.4 Reduced Availability of Cotton With Non-Monsanto Traits*

As a subsidiary of Monsanto, only one (3%) of Stoneville's 32 biotech cotton varieties planted in 2006 carried a non-Monsanto trait, versus 17 of 135 (13%) biotech varieties with non-Monsanto traits for the rest of the industry. This one variety—bromoxynil-tolerant cotton BXN 47—was planted to negligible (<0.05%) acreage.[23] In other words, biotech varieties with non-Monsanto traits are more than four times more common in cotton seed sold by Stoneville's competitors (chiefly Bayer and Phytogen). If Monsanto were allowed to acquire DPL, one would expect it to pursue the same policy (exclusion of competitors' traits) with its new subsidiary's germplasm. In 2006, all 46 of DPL's biotech cotton varieties carried Monsanto traits. Yet over the past few years, DPL has taken significant steps to diversify its future biotech trait offerings, steps which could easily be undone in the event of a merger. Below, we examine DPL's diversification efforts and the broader field of experimental biotech traits being developed in cotton.

3.4.1 Cotton With Syngenta's VipCot Insecticidal Protein

In 2004, DPL acquired global licenses to incorporate VipCot insecticidal proteins developed by Syngenta in its cotton varieties, in return for $47 million to be paid over three years (DPL-Syngenta 2004). Though DPL expected to market limited quantities of VipCot-containing seed in 2006, this did not come to pass. In 2006, DPL acquired Syngenta's global cotton seed business, including cotton germplasm in the U.S. In the company's 2006 press release, commercial introduction of VipCot-containing cotton varieties was pushed back 2–3 years, to 2008–09, ''subject to receiving regulatory approvals'' (DPL-Syngenta 2006). Syngenta received USDA clearance for VipCot in 2005 (USDA APHIS 2005), but since 2004 has obtained only a series of time-limited provisional approvals from the Environmental Protection Agency (EPA) for the VipCot insecticidal protein VIP3A (for the first, see EPA 2004).[24] The latest provisional approval expires on May 1, 2007 (EPA 2006), at which point Syngenta might seek a renewal of the temporary exemption from EPA, or apply for final clearance. Marketing of VipCot is unlikely to proceed without final clearance from EPA.

The merger could only reduce DPL's incentive to market cotton containing VipCot, given the fact that VipCot (assuming final EPA clearance) would compete with its new owner's latest IR trait, Bollgard II, or other new IR traits Monsanto develops to complement or succeed Bollgard II.

3.4.2 Cotton With DuPont's GAT Herbicide Tolerance

In 2006, DPL obtained licenses from DuPont to deploy an experimental dual herbicide-tolerance trait known as Optimum GAT in cotton and soybeans (DPL-DuPont 2006). The GAT trait is being developed in cotton by a DPL-DuPont joint venture known as DeltaMax Cotton LLC. The GAT trait provides tolerance to two herbicides rather than one, as with all previous HT traits. GAT crops, if successfully developed, will be tolerant to both glyphosate and ALS inhibitors, a popular class of herbicides used on cotton, soybeans and corn. GAT is being advertised by DuPont as a means for farmers to continue using the popular herbicide glyphosate, while at the same time permitting application of a second herbicide to deal with the growing problem of glyphosate-resistant weeds (DuPont-Pioneer 2006a).

The merger would present Monsanto with an interesting dilemma—whether to allow its new subsidiary to market DPL cotton varieties with a competitor's glyphosate-tolerance trait. Monsanto's glyphosate-tolerance traits (Roundup Ready & RR Flex) are the pillar of the company's biotech crop empire. Not only is Roundup Ready by far the dominant trait in cotton, it represents the only trait deployed in biotech soybeans (and 89% of U.S. soybeans were transgenic in 2006 (USDA ERS 2006b)), and the dominant HT trait in both corn and canola. Monsanto might well be reluctant to allow DPL to market cotton varieties with a competitor's glyphosate-tolerance trait. This reluctance can only be increased by the plans of DuPont and Syngenta to jointly incorporate GAT in soybeans, corn and perhaps other crops, further challenging Monsanto's dominance in HT technology (Greenleaf Genetics 2006; StLPD 2006).

Growers in the Southeast, where DPL's market share exceeds 86% (USDA AMS 2006), are concerned that the proposed merger would reinforce DPL's ''inordinate control'' of their seed market and deny them needed new varieties. According to University of Georgia cotton agronomist Steve Brown:

> The collective technology pool of the merged company would conceivably include not only Monsanto's Bollgard, Bollgard II, Roundup Ready, and Roundup Ready Flex traits but also the Verdia GAT gene, the DuPont ALS-tolerant gene, and Syngenta's VIP system. These latter technologies could be developed * * * or shelved. The fact that they are not in another company's laboratory or greenhouse prevents the introduction of products that could effectively compete with Monsanto's current portfolio. Shelving such technology—or even physically eliminating existing transgenic lines in which these new genes have successfully been introduced—establishes serious, lengthy hurdles for other would-be competitors.
>
> Growers in Georgia are already frustrated with the inordinate control exercised by one company. Unless issues of traits are adequately addressed in the proposed merger, things could get worse. The real answer to the overwhelming control of varieties and technology by a single provider is legitimate competition (Brown 2006b).

3.4.3 Other Biotech Cotton Trait R&D

Companies wishing to conduct outdoor field trials of experimental biotech crops (i.e. environmental releases) must submit ''notifications'' to USDA's Animal and Plant Health Inspection Service (APHIS). Notifications give basic information about the proposed field trials, such as the type of crop and genetic modification, containment measures, and overall acreage. APHIS normally responds by issuing ''acknowledgements,'' allowing the trials to proceed. APHIS makes some of the notification information available to the public in a searchable database. The following analysis is based on these data for biotech cotton field trials from the year 2000 through the end of 2006.

Monsanto has received over half (53%) of the 449 USDA permits for transgenic cotton field trials since the year 2000, three times more than its closest competitor, Bayer, at 17%. These two companies, plus Syngenta and Dow, received 91% of all permits, with the remainder divided among DPL and six other institutions. While these data show Monsanto's clear dominance in cotton trait R&D, they greatly overestimate the degree of competition in transgenic cotton trait research and development. Aggregate field trial acreage is a better measure of R&D efforts than number of permits.

This is because new biotech crops require extensive field testing that can take 5–10 years, and the majority fail early on. Stage of development correlates roughly with size of field trials. Permits for small trials from

[23] In 2004, Emergent Genetics, Inc., then owner of Stoneville, announced a phase-out of bromoxynil-tolerant cotton varities (Robinson 2004).

[24] While most genetically engineered crops require only USDA approval for commercial introduction, those like VipCot that produce pesticides require additional approval of the pesticide by the EPA. Companies normally seek time-limited approvals for GM crop pesticidal proteins from EPA while the pertinent crop is undergoing field trials.

fractions to dozens of acres indicate early-phase development, and high likelihood of failure. Permits for larger field trials in the hundreds to thousands of acres, especially if conducted in multiple locations over consecutive years, indicate a greater likelihood of eventual USDA clearance. The significance of field trial acreage as a measure of R&D progress is indicated by the fact that companies sometimes claim permit acreage as confidential business information (CBI) so as to prevent competitors from learning the R&D status of a given experimental crop (personal communication, James White, APHIS).[25]

When one compares acreage figures (see Appendix 5), Monsanto's dominant position as measured by number of permits becomes overwhelming. Monsanto was responsible for nearly 94% of experimental biotech cotton acreage (80,956 acres) over the past seven years—26 times more than Bayer (3.6% or 3073 acres) and 47 times more than Syngenta (2.3% or 1943 acres), its closest competitors. By the more accurate measure of acreage, then, Monsanto has roughly the same predominant position in R&D for future cotton traits as it does for currently marketed cotton traits.

In the event of a merger, Monsanto would have a natural incentive to exclude competitors' traits from DPL seeds. Its overwhelming dominance in cotton trait R&D demonstrates that it would have no need to license traits from Syngenta, Bayer or other firms.

### *3.5 Production Costs and Productivity of Cotton Cropland*

Glyphosate-resistant weeds are on the rise, and they are already increasing growers' production costs, in some cases dramatically. Continued increases in the use of glyphosate promise an accelerated development of glyphosate-resistant weeds, with concomitant rise in production costs to control them and adverse agronomic impacts, such as increased erosion from reduction in conservation tillage and a return to the use of more toxic herbicides (Section 2.7). The negative effects of rising Roundup use on soil microorganisms and plant nutrition may pose an increased long-term risk of plant disease and yield losses, both in cotton and other crops, and potential threats to amphibian populations (Section 2.8). Finally, the sometimes erratic performance of Monsanto's cotton—problems such as deformed bolls and dramatic yield losses first noted in the 1990s, but still occurring today (Section 2.6)—makes near-total dependence on cotton with Monsanto technology unwise.

All of these adverse impacts are direct consequences of the growing dominance of Monsanto's traits, particularly its Roundup Ready (Flex) traits, in cotton. The merger would exacerbate these problems by enhancing Monsanto's ability to incorporate its traits in a large portion of U.S. cotton seeds well into the future.

### *3.6 Impacts on Growers of Other Crops*

While the cotton industry is the most relevant context for assessment of the proposed combination, the merger would likely contribute to further increasing Monsanto's seed and trait dominance in other crops as well. This is because Monsanto has extensive germplasm holdings and/or trait penetration in corn, soybeans, canola, vegetables, fruits and other major crops, while DPL is a major presence in soybeans as well as cotton; and essentially the same traits are often deployed, or deployable, in multiple crops. One effect of this increased dominance in seeds and traits is that growers of other crops will experience an exacerbation of the adverse agronomic and environmental impacts discussed above with respect to Monsanto's technology, particularly Roundup Ready (Flex), in cotton. Indeed, in many cases cotton growers are also growers of other crops, such as soybeans and corn.

#### 3.6.1 Concentration in Seeds and Traits Other Than Cotton

In 2005, Monsanto became the largest seed firm in the world, with seed sales of $2.8 billion, to surpass the traditional leader, DuPont Pioneer (ETC 2005).

Appendix 6 illustrates the company's dramatic rise to dominance. Monsanto undertook two major ''shopping sprees'' [26] in the mid-90s and the middle of this decade. Here, we will treat only the North American acquisitions (see Section 3.9 for international deals).

From 1996–1998, Monsanto's aggregate multi-billion dollar acquisitions of DeKalb Genetics, Asgrow, Agracetus, Holden's Foundation Seeds, Calgene and smaller firms catapulted it to number one in U.S. soybean and number two in U.S. corn seed sales (Fernandez-Cornejo 2004, Tables 16 & 19). In 2005, Monsanto reportedly had 41% and 25% market shares in global corn and soybean seed sales, respectively (ETC 2005). The second, and ongoing, wave of acquisitions in this decade has focused on regional U.S. seed firms, which Monsanto is purchasing through its holding company, American Seeds, Inc. (ASI). In the two years from ASI's formation in November 2004 to December 2006, Monsanto spent $350 million to acquire 15 firms, giving it an additional share in U.S. corn and soybean seed sales of more than 6.5% and 2.0%, respectively (Table 3). [27] Monsanto's $1.4 billion acquisition of the world's largest fruit and vegetable seed firm, Seminis (Monsanto 2005a), in 2005 reportedly gave the company from 23% to 38% shares of the global seed markets for tomatoes, onions, peppers, cucumbers and beans (ETC 2005). The $300 million buyout of Emergent Genetics, also in 2005, included 12% of U.S. cotton seed sales represented by the Stoneville and NexGen brands (Monsanto 2005b). Monsanto also acquired significant canola germplasm with buyouts of Limagrain Canada (Monsanto 2001) and the Advanta and Interstate canola brands (Monsanto 2004a). In addition, Delta and Pine Land is fast becoming a major player in soybeans as well as cotton (DPL 2004).

[25] Alternately or additionally, the company will claim the trait or gene being field tested as confidential business information.

[26] Sec *http://www.americanseedsinc.com/news/2005-03-01.htm.*

[27] Compiled from information in news releases at *http://www.americanseedsinc.com/news.htm.*

**Table 3**
**Monsanto's Acquisitions Through American Seeds, Inc.: 2004 to 2006***

| Company / Brands | State | Amount ($) | % of U.S. Market | Date acquired |
|---|---|---|---|---|
| Channel Bio Corp:<br>* Crow's Hybrid Corn Co.<br>* Midwest Seed Genetics<br>* Wilson Seeds | Indiana | 120 million | 2% of corn | Nov. 2004 (American Seeds, Inc. formed) |
| | | | | |
| NC+ Hybrids | Nebraska | 40 million | 1% of corn | March 2005 |
| | | | | |
| Fontanelle Hybrids | Nebraska | 52 million | 1% of corn | Sept. 2005 |
| Stewart Seeds | Indiana | | | |
| Trelay Seeds | Wisconsin | | | |
| Stone Seeds | Illinois | | | |
| Specialty Hybrids | Eastern Corn Belt | | | |
| | | | | |
| Gold Country Seed, Inc. | Minnesota | 8.7 million | 0.4% of corn and soy | March 2006 |
| Heritage Seeds | Indiana | | | |
| | | | | |
| Diener Seeds | Indiana | 77 million | 1.4% corn<br>2.0% soy | July 2006 |
| Sieben Hybrids | Illinois | | | |
| Kruger Seed Company | Iowa | | | |
| Trisler Seed Farms | Illinois | | | |
| Campbell Seed | Indiana | | | |
| | | | | |
| Landec Corp.:<br>* Fielder's Choice<br>* Heartland Hybrids | Indiana | 50-55 million | Slightly more than 1% of corn | Dec. 2006 |
| | | | | |
| **15 companies** | **6 states** | **$348 - $353 Million** | **> 6.5% corn<br>> 2.0% soy** | |

* Source: Compiled from information in news releases at http://www.americanseedsinc.com/news.htm.

3.6.2 Cross-Crop Trait Deployment

A given trait, or slightly differing versions thereof, is deployable in multiple crops. The pre-eminent example of cross-crop trait deployment and dominance is Monsanto's Roundup Ready. According to Monsanto's figures, 102.6 million acres of Roundup Ready soybeans (66.4), corn (24.8), cotton (10.8) and canola (0.6) were planted in 2005. Monsanto's corresponding estimate for 2006 is 113–117 million acres (Monsanto 2006c). Monsanto has also received commercial clearance for Roundup Ready versions of beets and alfalfa, though neither of these are grown to a significant extent due to rejection by consumers and the food industry. Monsanto dropped efforts to gain USDA approval for Roundup Ready wheat in 2004 for similar reasons, though it could re-apply in the future. USDA is currently considering de-regulation of Roundup Ready turfgrass for lawns and golf courses. Monsanto is field-testing a number of other Roundup Ready crops, including onions, peas and Kentucky bluegrass (Cerdeira & Duke 2006).

The majority of commercialized Roundup Ready crops utilize the same mechanism, a modified version of a bacterial enzyme that is immune to glyphosate, CP4 EPSPS, from soil bacteria of the genus Agrobacterium (Cerdeira & Duke 2006).[28]

The only other significant transgenic HT trait is Bayer's LibertyLink (glufosinate tolerance). LibertyLink (LL) versions of canola, corn, cotton, soybeans, beets and rice have received USDA approval,[29] though only LL canola, cotton and corn are being grown commercially.[30] Though we have not found precise figures, commercial acreage of LL crops in the U.S. is estimated at roughly 1 million acres,[31] or about one percent of Roundup Ready crop acreage. LibertyLink crops utilize the glufosinate-inactivating enzyme phosphinothricin acetyl transferase

[28] Roundup Ready canola contains 2 mechanisms of glyphosate resistance: EPSPS and glyphosate oxidase (GOX), an enzyme that degrades glyphosate.

[29] See "phosphinothricin-tolerant" listings for Bayer CropScience and two companies it has since acquired, AgrEvo and Aventis, at *http://www.aphis.usda.gov/brs/not_reg.html*. Phosphinothricin is another name for glufosinate, the active ingredient in Bayer's Liberty-brand herbicides.

[30] LL soybeans received USDA approval in 1996, but were never marketed due to concerns over export market rejection (Illinois Extension 1999), though Bayer reportedly plans to introduce them in 2008 (Gullickson 2006). Three LL rice varieties have also received USDA approval, but have not been marketed for similar reasons (Weiss 2006).

[31] USDA AMS data for 2006 show that 3.64% of 14.95 million acres of upland cotton, or 550,000 acres, were planted to LL cotton; Monsanto's estimate that 3% of transgenic HT corn was LibertyLink in 2003 suggests roughly 350,000 acres of LL corn in that year (Monsanto 2004b); since 75% of the 1.08 million acres of canola in 2003 were Roundup Ready (Cerdeira & Duke 2006, p. 1635), LL canola represents some fraction of the remaining 270,000 acres.

(PAT) generated from either one of two closely related genes (bar and pat) derived from soil bacteria of the genus Streptomyces (USDA APHIS 2006, p. 29).

One finds similar cross-crop deployment in the smaller market for IR traits, although only in corn and cotton. Monsanto's Bollgard and Bollgard II IR traits are found in 99% of IR cotton acreage. While we have not found figures for IR trait market shares in corn, Monsanto is likely dominant here as well, though Syngenta, Dow, and Dow-Pioneer all have competing traits. IR traits in corn include a handful of slightly differing versions of insecticidal proteins that kill differing insect pests; the most notable difference is found in corn, where differing IR traits kill pests of grains and leaves (e.g. corn-borers) and root pests (corn rootworm).

3.6.3 Fewer Trait Choices and Adverse Impacts on Other Crops

With DPL's additional germplasm in cotton and soybeans, a post-merger Monsanto-DPL would have secure access to more seed varieties in which to incorporate its traits. Since essentially the same trait can be deployed in multiple crops, an investment in development of a single trait brings returns roughly commensurate with the number of trait-bearing seeds, of whatever crop, that are sold.[32] For instance, Monsanto's recent acquisition of Seminis gives it broad new opportunities for introduction of its current and future traits in a number of new vegetable crops. Conversely, a trait provider with lesser germplasm has fewer opportunities to recoup its investment in the development of a given trait, and is thus at a competitive disadvantage in all crops. This vertical integration effect is clearly at play in the proposed combination with respect to Monsanto's industry-leading Roundup Ready (Flex) traits. Thus, the merger would consolidate Monsanto's current overwhelming dominance in traits and seeds for all major crops, and help extend its trait dominance to minor crops such as vegetables in the future. Vertical integration efficiencies are generally adduced in support of mergers. Yet in this case, the additional vertical integration of traits and germplasm in a combined Monsanto-DPL will only increase market power and discourage competition. Monsanto-DPL's near monopoly in traits and predominance in (cotton) seeds means that vertical integration would not bring lower seed prices for farmers.

Less competition in traits will mean fewer choices for growers of other crops. In addition, the adverse agronomic and environmental impacts discussed above for cotton will be exacerbated in other crops, particularly for cotton growers who also grow other crops.

Government research would seem to support this assessment of fewer seed choices. Researchers with the USDA's Economic Research Service have found that ''consolidation in the private seed industry over the past decade may have dampened the intensity of private research undertaken on crop biotechnology relative to what would have occurred without consolidation, at least for corn, cotton and soybeans.'' They add: ''Also, fewer companies developing crops and marketing seeds may translate into fewer varieties offered'' (Fernandez-Cornejo & Schimmelpfennig 2004).

*3.7 Organic Cotton*

Organic cotton production by definition excludes use of genetically engineered seeds, chemical fertilizers and pesticides under USDA organic standards (OCA 2004). Though it still represents a very small market, organically grown cotton has enjoyed tremendous growth recently at the retail, manufacturing and farm levels. Global retail sales of organic cotton products increased from $245 million in 2001 to $583 million in 2005, an annual average growth rate of 35%. Global organic cotton fiber sales increased nearly six-fold, from 5,720 metric tonnes in 2000 to 32,326 metric tonnes in 2005 (Organic Exchange 2006).

Major retailers are largely responsible for this booming market. For instance, Patagonia converted its entire line of sportswear to 100% organic cotton in the 1990s, and 2.5% of Nike's total cotton use in 2003 was organic,[33] making it the largest user of organic cotton in that year (Organic Exchange undated). In 2004, Wal-Mart and Sam's Club began marketing an organic cotton line of yoga outfits, and since then have introduced organic cotton baby clothes, bed sheets, towels, and ladies apparel. The popularity of these products spurred Wal-Mart to become the largest single purchaser of organic cotton in 2006. Other retailers with organic cotton lines include Eileen Fisher and Timberland (Gunther 2006). This strong growth is expected to accelerate in the coming years (Organic Exchange 2006).

Conventional and biotech cotton production is extremely chemical-intensive, accounting for approximately 25% of global insecticide use, and 10% of overall pesticide use (Organic Exchange undated). Thus, organic cotton production means significantly less chemical pollution of the environment, avoidance of chemical-related threats to the health of growers,[34] and no contribution to the rapidly growing problem of herbicide-resistant weeds. Equally important is the increased revenue from organic cotton, which offers smaller growers an opportunity to survive in a ruthless cotton industry marked by fewer and ever-bigger farms (see Figure 3). By one estimate, organic cotton producers can increase their income by 50%: They receive a 20% premium over the price paid for conventional/biotech cotton, and spend less on inputs (which includes seeds and fertilizers as well as pesticides) (Fashion United).

Organic cotton is grown in the U.S. (primarily Texas, but also Arizona, Missouri and New Mexico),[35] but increasingly in a number of African nations as well as India, China, Turkey, Peru and Paraguay.[36] An in-depth, two-year study in India showed that organic cotton producers spent 40% less on inputs, and had slightly higher yields, than conventional cotton producers (Ramakrishnan 2006). Low input costs are particularly important for resource-poor farmers in developing countries, who frequently incur debt at high interest rates to purchase seeds and chemicals. The high price of biotech cotton seed has been a major complaint of developing country farmers induced to buy it in expectation of better performance (see Section 39.1).

Biotech cotton poses a number of potential threats to organic producers. First, biotech cotton could contaminate organic cotton and render in unsaleable. Contamination can occur when pollen from transgenic plants blows or is carried by insect pollinators to fertilize neighboring conventional/organic fields, through admixture of transgenic seeds in conventional/organic seeds, by the sprouting of transgenic ''volunteer'' plants from unharvested seeds in a subsequently grown field of conventional/organic crops, and by other means (UCS 2004). There are numerous examples of inadvertent

[32] This applies to early-stage research and development of the trait. Incorporation of the trait requires later-stage development expenditures specific to the individual crop.

[33] The common practice of blending organic and conventional cotton accounts for the greater increase in global organic cotton fiber sales vs. retail sales, since products must contain over 95% organic cotton to be labeled ''organic cotton.''

[34] See *http://www.organicexchange.org/Farm/cotton_facts_intro.htm.*

[35] See *http://www.aboutorganiccotton.org/stewards.html.*

[36] See *http://www.organicexchange.org/Map/oce.html.*

transgenic contamination mining markets for conventional/organic producers in other crops. For example, as reported in Nature Biotechnology, ''[t]he introduction of transgenic, herbicide-tolerant canola in western Canada destroyed the growing, albeit limited, market for organic canola,'' which commands a 100% premium over conventional canola (Smyth et al. 2002). The extremely widespread contamination of grain supplies and food products with transgenic StarLink corn in 2000/2001 resulted in extremely costly recalls of over 300 corn products, sharp drops in exports as contaminated corn shipments were rejected, and lower prices for corn farmers (Freese 2001). Both canola and corn are considered ''outcrossing'' crops, while cotton is generally ''self-pollinated'' [37] But even self-pollinating transgenic crops like rice can pose a threat, as seen in the recent episode in which an unapproved variety of transgenic rice (LLRICE6OI) widely contaminated commercial rice supplies, wreaking havoc with rice markets and causing losses to rice farmers projected at up to $150 million (Weiss 2006). CFS (2006) gives additional examples of transgenic contamination.

Contamination episodes are seldom adequately explained, but are generally blamed on slipshod management practices on the part of the biotech company or farmers growing the crop, or on deficient regulatory oversight by governmental authorities. For instance, the USDA's Inspector General recently issued a scathing audit lambasting the USDA's Animal and Plant Health Inspection Service for numerous fundamental flaws in its oversight of genetically engineered crop field trials (USDA IG 2005). A less charitable interpretation was suggested by Don Westfall, of the biotech consultancy firm Promar International, who reportedly stated in connection with the StarLink corn episode noted above: ''The hope of the industry is that over time the market is so flooded [with GMOs] that there's nothing you can do about it. You just sort of surrender'' (Laidlaw 2001).

The production practices associated with biotech cotton may also reduce yields of nearby organic cotton producers through spray drift damage. Herbicides are sprayed liberally to kill weeds in virtually all non-organic cotton production. Sprayed herbicides can drift several miles, especially when applied via airplane, as is common with cotton, and damage other farmers' crops (Bennett 2007, see also Section 2.4). The potential for spray drift damage has increased with the introduction of Roundup Ready cotton, since it permits application of glyphosate over a wider time window than conventional cotton. Roundup Ready Flex cotton widens the application window still further, since it withstands glyphosate throughout the growing season, and moreover survives higher application rates than original RR cotton (see Section 2.7).

A third potential risk to organic cotton producers is the rapidly declining availability of high-quality conventional seeds, since organic standards prohibit use of transgenic seeds.

Acquisition of DPL would give Monsanto the world's largest cotton seed holdings, with substantial presence in both U.S. and many foreign markets (see Section 3.9). Monsanto has explicitly stated that important goals of its acquisition of DPL are ''to create a new global platform in cotton'' and ''to accelerate biotech trait penetration'' (Monsanto 2006b, emphasis added). Therefore, the merger would likely lead to increased acreage of Monsanto biotech cotton planted overseas, posing the significant threats outlined above to organic cotton producers in African and other developing country nations, where governmental oversight of biotech crops is often even weaker than in the U.S. Since organic cotton products sold in the United States increasingly come from organic fiber grown overseas, the merger could have the effect of restricting the choice of organic cotton products for American consumers.

### *3.8 Seed Sterility Technology (Terminator)*

DPL and USDA jointly hold at least three major patents on a transgenic method for genetic sterilization of seeds (ETC 2003). Known as the Technology Protection System, or Terminator, it involves genetically manipulating seeds such that, upon application of a chemical trigger, mature plants arising from the treated seeds themselves produce seeds that are sterile (UCS 1998). The purpose of Terminator technology is to prevent farmers from saving seeds from their harvest for the purpose of replanting. The USDA and DPL regard Terminator as a way to provide U.S. seed and trait firms with a biological means to prevent ''unauthorized'' reproduction of seeds bearing their patented biotech or other traits (USDA ARS 2001). This is regarded as particularly important in developing countries, home to most of the world's 1.4 billion people who depend on farm-saved seed and seeds exchanged with their neighbors as their primary seed source (Shand 1999).[38]

Terminator proponents often argue that poor farmers would continue to be free to save and replant their own varieties. Yet if a farmer's neighbor plants a Terminator crop, cross-pollination could render a portion of the first farmer's seed sterile (CGIAR 1998). And if shipments of Terminator seed-containing grain are sent to developing countries, the common practice of planting seed from grain ostensibly meant for consumption (e.g. food aid) could also lead to farmers unknowingly planting their fields with sterile seeds, resulting in significant drops in yield (FAO 2002, p. 5; ETC 2003, pp. 3–4). The growing number of often unexplained episodes in which biotech crops inadvertently contaminate conventional crops demonstrates that these are real possibilities (CFS 2006).

Proponents also argue that resource-poor farmers would continue to have access to non-Terminator seeds developed by the public sector. Yet this is by no means assured. After all, it is a public agency (the USDA) that helped develop sterile seed technology in the first place, and stands to earn an estimated 5% royalties on net sales (RAFI 1998). And public sector plant breeding has declined dramatically in the past two decades, both in the U.S. and around the world, increasingly supplanted by private sector seed (Femandez-Cornejo 2004; Shand 1999). We have already discussed how university-bred cotton varieties virtually disappeared in the U.S. in the early 1990s (Section 2.1.1, Appendix 1), and how farmers' choice of both conventional and biotech cotton seeds is being restricted due to oligopolistic market power (Sections 2.4 and 2.5).

These developments help explain the international outcry against Monsanto's proposed acquisition of DPL in 1998. Critics feared that Monsanto would deploy seed sterility technology in its growing stocks of the world's germplasm (see Sections 3.6 & 3.9 and Appendix 6). Criticism of Terminator came from many sources, including Jacques Diouf, Director General of the

[37] ''Self-pollinated'' means that a particular plant's (male) pollen fertilizes primarily its own (female) ova, while the pollen of ''outcrossing'' plants normally fertilizes other plants of the same species. But the terms are relative. For instance, insect pollinators like honeybees can carry cotton pollen for hundreds of feet to fertilize other cotton plants, see: *http://www.aphis.usda.gov/brs/cotton.html.*

[38] Seed saving is also practiced in developed countries, however. As recently as 1997 in the US., it is estimated that 63% of wheat, 22% of cotton, and 19% of soybeans came from saved seeds (Fernandez-Cornejo 2004, Table 5). However, the dramatic rise of patented biotech cotton and soybeans varieties that cannot be legally saved has almost certainly reduced these figures.

United Nations' Food and Agriculture Organization; the Consultative Group on International Agricultural Research (CGIAR), the world's largest international agricultural research network (RAFI 2000); and Gordon Conway, former President of the pro-biotech Rockefeller Foundation, a major funder of the Green Revolution (Rockefeller 1999). Opposition to Terminator is strong in developed countries and near universal in the developing world (RAFI 2000).[39] World Food Prize winner M.S. Swaminathan of India warned that deployment of Terminator technology would erode the right of farmers to save and breed seed varieties appropriate to their areas, as well as foster genetic uniformity, increasing the vulnerability of crops to pests and disease (Swaminathan 1998).

Such criticism impelled Monsanto, before the merger fell through, to make ''a public commitment not to commercialize sterile seed technologies'' (Shapiro 1999). In its 2005 Pledge Report, however, Monsanto initially restricted its pledge to read ''nor to commercialize sterile seed technologies in food crops.'' When challenged over this apparent change of policy, Monsanto apologized and eventually restored the original language (ETC 2006). Nevertheless, the company left the door open to future deployment of Terminator in food or non-food crops with the proviso: ''* * * but Monsanto people constantly reevaluate this stance as technology develops'' (Monsanto 2005c, p. 29).

Should the proposed combination take place, there are several reasons to be concerned about an imminent ''reevaluation'' leading to possible deployment of Terminator technology in cotton.

(1) DPL has always been a zealous proponent of Terminator. In 2000, DPL's Harry Collins declared: ''We've continued right on with work on the Technology Protection System. We never really slowed down. We're on target, moving ahead to commercialize it. We never really backed off'' (as quoted in RAFI 2000). DPL and USDA have reportedly tested Terminator cotton and tobacco in greenhouses (ETC 2003).

(2) Despite its pledge, at least one Monsanto officer has reportedly been promoting genetic use restriction technologies (a category that includes Terminator) at numerous international meetings (Dr. Roger Krueger, see ETC 2006).

(3) Monsanto's restriction of its ''no-Terminator'' pledge to ''food crops'' (altered only after a public challenge), coming just one year before its renewed attempt to acquire DPL, holder of Terminator patents and the dominant player in non-food cotton, is at the very least suspicious.

(4) Since objections to Terminator have focused heavily on its threat to the food security of developing countries, initial deployment in a fiber crop like cotton may be regarded as less likely to provoke the same level of opposition.

(5) In 2001, USDA confirmed that commercial introduction of Terminator would likely be in cotton: ''Delta and Pine Land Co. researchers are further developing the technology to ready it for commercial use. However, even the most optimistic predictions estimate that commercial cotton with built-in TPS technology may not be available until 2004'' (USDA ARS 2001).

(6) Monsanto's aggressive investigations and/or prosecution of thousands of U.S. farmers for (allegedly) saving the company's patented Roundup Ready soybeans demonstrate the lengths to which the company will go to discourage the practice of seed-saving (CFS 2005).[40] Terminator would provide it with a more effective, biological means to the same end. As former DPL president Murray Robinson put it: ''We expect [the new technology] to have global implications, especially in markets or countries where patent laws are weak or non-existent'' (as quoted in Shand 1999).

(7) Monsanto could profit substantially from deployment of Terminator. In 1998, DPL projected that Terminator could generate revenues in excess of $1 billion (Shand 1999).

Should Monsanto choose to ''reevaluate'' its current ''pledge'' not to deploy Terminator, its acquisition of DPL would give it a much expanded germplasm base in which to roll out sterile seed technology in a fiber crop less likely to arouse public opposition, thereby threatening the millennia-old tradition of farmer-led seed-saving and breeding.

### *3.9 International Perspective*

The potential international impacts of the merger also deserve consideration, for at least two reasons. First, a combined Monsanto-DPL would have large market shares of cotton and other crops in a number of countries, raising anti-competitive concerns. Second, Monsanto is known for questionable and in some cases illegal business practices in foreign countries, practices that may raise red flags with government regulators outside of the U.S.

DPL is the eleventh largest seed company in the world, with 2004 seed sales of $315 million (ETC 2005). An unknown portion of these sales occur overseas. According to a 2004 presentation to investors, DPL controls 86% of the Mexican cotton seed market, and has an 85% share in South Africa, 70% (estimated) in Colombia, 30% (estimated) in Brazil, 30% in Greece, 27% in Spain, 25% (estimated) in Australia, 14% in Argentina, and 5% in Turkey and China (DPL 2004). In May 2006, DPL announced acquisition of Syngenta's global cotton seed business, comprised of operations and assets in India, Brazil, Europe, and certain cotton germplasm in the United States. The Indian acquisitions included a research facility and ''cotton seed germplasm and distribution assets in each of the three primary growing regions of India'' (DPL-Syngenta 2006).

In addition to its international cotton operations in India (see next section), Monsanto has also gained a substantial international presence in other crops (Appendix 6). For instance, its purchase of at least four Brazilian seed firms in the 1990s gave it a 63% market share in Brazilian corn seed in 1998–99 (Pardey *et al.* 2004, p. 19) and a substantial stake in Brazil's soybean market as well. Other notable international deals in the 1990s include acquisition of Cargill's international seed division ($1.4 billion), and two major South African seed firms (mainly corn).

The large international marker presence of a combined Monsanto-DPL in cotton seed and other major crop markets would be of great concern, particularly in light of Monsanto's history of questionable and illegal business practices overseas.

#### 3.9.1 Monsanto in India

Monsanto has undertaken a major effort to introduce GM cotton internationally, notably in India and Indonesia (for the following discussion, see FoEI 2007, pp. 42–55). For instance, Monsanto acquired a 26% share of India's largest seed firm, Maharashtra Hybrid Seed Company (Mahyco), in the 1990s, and established a 50:50 joint venture with Mahyco known as Mahyco Monsanto Biotech to market Bt cotton there (Cyber India 2004). India plants more cotton (over 20 million acres) than any country in the world, making it a

[39] See also *http://www.banterminator.org/news_updates/news_updates.*

[40] Monsanto budgets $10 million annually for a department of 75 employees to investigate and prosecute farmers. Through 2004, Monsanto had won over $15 million in damages from U.S. farmers in cases that went to court, and likely much more in confidential out-of-court settlements (CFS 2005, pp. 23, 33–34).

lucrative market. Controversy over the commercial introduction of Mahyco-Monsanto Bt cotton in India from 2002 to 2005 has centered on allegedly deceptive advertising campaigns portraying the Bt cotton as endowed with magical qualities, the more than three-fold higher price of biotech cotton seed,[41] and numerous crop failures. Many Indian farmers went into debt to purchase the high-priced seed, based on promises of greatly increased yields and reduced insecticide expenditures. However, reports from Indian state government officials arid farm organizations document that the Bt cotton often yielded less than conventional cotton, and did not resist pests as promised by Mahyco-Monsanto. In consequence, Indian government officials in various states, most recently in Tamil Nadu (Sharma 2007), have demanded compensation for farmers who have suffered Bt cotton failures.

As reported in Nature Biotechnology, a study by the Nagpur-based Central Institute of Cotton Research revealed a constellation of problems with Mahyco-Monsanto's Bt cotton varieties, which were developed for U.S. farmers but often proved unsuitable to Indian conditions (for the following discussion, see Jayaraman 2005). First, the built-in insecticide was not produced at sufficient levels in cotton bolls to adequately control the cotton bollworm, India's chief cotton pest, especially late in the growing season, which is longer than in the U.S. This meant both greater-than-expected insect damage for some farmers, and in the longer term, increased probability of development of pests resistant to the Bt insecticide. Second, an estimated one-quarter of the hybrid Bt cotton seeds didn't produce any insecticide at all, a problem not seen in the U.S., where true-breeding varieties are planted. Suman Sahai, president of the Indian civil society group, Gene Campaign, reportedly charged Monsanto with promoting the use of hybrids in India to force farmers to buy fresh seeds every year even though it is aware that true-breeding varieties (whose seeds can be saved for subsequent crops) perform better. The deficient insect-resistance of Bt cotton in India has meant that Indian cotton growers purchase and spray more chemical insecticides than Bt cotton growers in other parts of the world. Due to such agronomic problems, the Indian government refused to renew the licenses for three Bt cotton varieties in many states. The recent spate of farmer suicides in Indian cotton-growing regions has many causes, including drought-related crop failures and low cotton prices, but indebtedness arising from purchase of high-priced biotech cotton seeds that sometimes failed to perform was by many accounts a significant factor (FoEI 2007, p. 50).

3.9.2 Monsanto's Bribery in Indonesia

Monsanto's abortive bid to introduce biotech cotton to the Indonesian market involved bribery of and illicit payments to Indonesian government officials. According to a U.S. Securities and Exchange Commission (SEC) complaint (SEC 2005a), in 2002 a senior Monsanto manager based in the U.S. authorized payment of a $50,000 bribe to a senior Indonesian Ministry of Environment official to repeal a decree requiring environmental impact assessments of biotech crops prior to their introduction, a decree applying to Monsanto's Bt cotton (the decree was never repealed). In addition, Monsanto's Indonesian affiliates made at least $700,000 in illicit payments to 140 Indonesian government officials and their family members from 1997 to 2002. Monsanto was fined $1 million by the U.S. Department of Justice for violation of the U.S. Foreign Corrupt Practices Act and an additional $500,000 by the SEC (SEC 2005b). As in India, many Indonesian farmers were extremely disappointed with the performance of Monsanto's cotton, which was sold at a substantial premium to conventional seed but in many cases failed to deliver the promised added value (FoEI 2007, pp. 52–53).

3.9.3 Monsanto's Questionable Soya Lawsuits in Europe

A third example of questionable business practices involves Monsanto's lawsuits against eight European importers of Argentine soy meal, which is largely derived from Roundup Ready soybeans. Monsanto is demanding that the importers pay royalties on these imports based on the company's European patents on Roundup Ready (RR) soybeans (MarketWatch 2006).

Monsanto's attempts to collect royalties from Argentine soybean farmers have failed, chiefly because the company does not have a patent on RR soy in Argentina (FoEI 2007, p. 24), and the country's 1973 seed law allows farmers to legally save and replant RR soy from their harvests (Valente 2004). Monsanto chose to introduce RR soy in Argentina despite the lack of patent protection (Benbrook 2005, p. 14). Measures ostensibly introduced to penalize the illegal practice of selling saved RR seed also affect farmers who legally save their own seed for replanting. For instance, an ''extended royalty'' scheme introduced in 1999 requires farmers to sign a contract obligating them, upon purchase of RR soybean seeds, to pay a surcharge of $2 for each 50 kg of saved seed, and is associated with lengthy interrogations of farmers and intrusive inspections of farmers' field by seed dealers (Nellen-Stucky & Meienberg 2006 Valente 2006). Argentine farmers are generally opposed to such schemes, which recall Monsanto's practices in the U.S. Monsanto's U.S. patents on RR soybeans have allowed the company to aggressively investigate and/or prosecute thousands of American farmers for (allegedly) replanting saved RR soy, resulting in decisions awarding the company over $15 million through 2004 (CFS 2005).

Monsanto's lawsuits against European importers of Argentine soy meal are widely regarded as having little chance of success, because they illegitimately assert a right to collect royalties on a processed derivative (soy meal) of the patented RR soy based on the mere presence of the RR gene, whereas the European patents at issue confer protection only to seeds in which the RR gene performs its function of conferring resistance to glyphosate, which is only true of planted seeds, not seeds or seed derivatives meant for (animal) consumption (Nellen-Stucky & Meienberg 2006). Argentina has reportedly obtained a legal opinion to this effect from the European Commission's Internal Market and Services Directorate-General (MarketWatch 2006). Some regard Monsanto's lawsuits as a stratagem to impose costly delays on Argentine soy meal exports to Europe, and thereby pressure the Argentine government to change its seed laws to suit the company (Nellen-Stucky & Meienberg 2006).

*3.10 Monsanto-DPL a Virtually Unchallengeable Competitor*

DPL's cotton seeds are generally considered the highest-quality germplasm in the industry, as suggested by its 51% share of the cotton seed market and the fact that it has the two top-selling cotton varieties sold by any company (USDA AMS 2006). Monsanto is the undisputed leader in cotton traits, with an over 95% market share, and has a similarly dominant position in R&D, with 94% of experimental transgenic cotton acreage since the year 2000

[41] Acting on a complaint from the government of Andhra Pradesh, India's Monopolies and Restrictive Trade Practices Commission issued notices to Monsanto and its Indian affiliates for taking undue advantage of its monopoly in Bt cotton seed by charging a royalty of 1,250 rupees on a 450 gm packet of seed, raising its price to 1,800 rupees (Mitta 2006).

(Appendix 5). On this basis alone, a merger of these two giants can only exacerbate concentration in an already highly concentrated industry.

But the merger's impacts look still more dire when one considers the strong linkage between quality germplasm and trait dominance. Access to limited high-quality germplasm—regarded as the ''delivery mechanism'' for traits—is absolutely crucial to effectively marketing biotech cotton.

> Seed proved to be the delivery mechanism of choice for agrobiotechnology, and, because high quality proprietary germplasm was in short supply, the strategic value of certain seed companies rose quickly (Kalaitzandonakes 1998).

At present, in the U.S., Monsanto has sure access only to its Stoneville subsidiary's germplasm, representing 12% of U.S. cotton. While its traits are currently offered widely in other firms' seeds via licensing agreements, these agreements are limited in duration and subject to expiration or cancellation. Acquisition of DPL would give Monsanto control of the highest-quality seeds, planted on more than four times as much acreage as Stoneville's, in which to incorporate its traits. The acquisition could also lead to cancellation of DPL's plans to diversify its trait offerings, as described in Section 3.4.

If Monsanto's competitors are prevented from deploying their traits in DPL's germplasm, they will be forced to seek access to a much smaller pool of mostly lower-quality germplasm in which to incorporate their traits via licensing agreements or acquisition. They would thus face two, likely insurmountable, obstacles: First, marketing new and unfamiliar traits to farmers committed from long experience and habit to Monsanto's industry-leading traits and doing so in germplasm whose quality in terms of yield and other desirable (non-biotech) attributes is unlikely to match Monsanto-DPL's. The extremely high concentration in seeds post-merger would make acquisition of quality germplasm by Monsanto's competitors effectively impossible. High-quality cotton germplasm is a naturally limited form of capital that accrues slowly over many years of patient breeding efforts. Unlike brick and mortar factories or other capital equipment, it cannot be fabricated, given only sufficient funds. This limitation makes entry considerably more difficult for a would-be innovative competitor than would be the case in a nuts-and-bolts or information technology industry.

Perhaps the single, most important factor to consider in assessing the merger is Monsanto's extraordinary success in deploying its traits in the seeds of its competitors, even competitors that are also trait providers themselves, via licensing agreements. In other words, Monsanto has come to overwhelmingly dominate traits in cotton (and other crops) even without the substantial additional vertical integration represented by acquisition of DPL. Since at present there is little room left for Monsanto traits in cotton, the proposed acquisition could only act to extend Monsanto's already unacceptably high level of trait dominance into the indefinite future.

Despite the undeniable attractiveness of the Roundup Ready system, however, there are also clear signs that transgenic trait ''adoption'' is a push as well as a pull affair, a product of oligopolistic market power as well as farmer demand. As demonstrated above, even popular conventional seed varieties are being eliminated or restricted in supply, while conventional versions of leading transgenic lines popular mainly for their yield (or other non-biotech attributes) are simply not available (Section 2.4). Thus, an accelerated decline in the availability of high-quality conventional seed is another likely outcome of the merger.

### *3.11 Conduct-Based Solutions in Light of the High Failure Rate in Agricultural Biotechnology*

One might imagine that the anticompetitive effects of the merger could be adequately addressed by requiring Monsanto-DPL to incorporate competitors' traits-for instance, Syngenta's VipCot IR and DuPont's Optimum GAT HT traits (Section 3.4). However, this sort of solution runs a high risk of failure due to the high failure rate associated with this relatively new technology, a factor easily overlooked by those inexperienced in the world of biotech crops.

In brief, the overwhelming majority of biotech traits developed in the laboratory are never effectively commercialized. Failure occurs at several stages in the research, development, regulatory review and commercialization process. A trait developed in the laboratory may well not reach the stage of outdoor field trials due to unexpected technical difficulties. The great majority of biotech plant varieties that do undergo outdoor field testing never receive government clearance for commercial cultivation, most often because the company drops development because of trait instability, poor agronomic performance in certain environments, and/or unforeseen health or environmental risks. And even the majority of those few biotech crops that do receive government clearance fail in the marketplace.

This high failure rate is often obscured by overly optimistic public relations material from biotech companies, which are understandably optimistic about future prospects for their traits and loathe to air their failures.

An approximate measure of the failure rate is provided by USDA data, which show that 976 genes,[42] and thus nearly as many biotech traits,[43] have been tested in roughly 50,000 outdoor field trials (Caplan 2005) involving more than 100 different plant species[44] since the late 1980s. Yet only 71 biotech ''events,'' or particular crop-trait combinations, have received commercial clearance.[45] Of these 71, only four crops with HT and/or IR traits have succeeded commercially, representing virtually 100% of the world's biotech acreage (see Appendix 7 and ISAAA 2006).[46]

While Syngenta's VipCot cotton has received USDA clearance, the EPA has not given final approval to VipCot's VIP3A insecticidal protein, perhaps due to concerns that it will kill non-target organisms as well as insect pests by virtue of its broad-spectrum activity. As noted in Section 3.4.1, DPL has already pushed back the introduction date of VipCot from 2006 to 2008–09, and there is no guarantee it will be released then, even assuming that a compulsory licensing agreement is imposed on Monsanto as a condition of the merger.

DuPont's Optimum GAT trait is even less certain to succeed. DuPont optimistically projects commercial introduction of GAT in soybeans in 2009 (StLPD 2006), to be followed by introduction in corn and cotton some years later, by one account 2012 (Polaris 2005). DuPont's Web site indicates that GAT cotton is at the early phase 1 (proof

[42] See *http://www.tsb.vt.edu/cfdocs/isblists2.cfm/opt=16,* last accessed Feb. 12, 2007.

[43] In the great majority of cases, a biotech trait is conferred by a single gene. A limited number of the 976 genes noted above are marker genes employed to facilitate the crop development process and do not themselves express a trait. USDA also lists alternative designations for some genes separately. On the other hand, an unknown but substantial number of genes claimed as ''confidential business information'' (CBI) of the biotech crop developer do not appear in this list (see Caplan 2005 on the growing number of CBI claims for genes), so the true number of biotech traits tested in field trials surely exceeds 1,000.

[44] *http://www.tsb.vt.edu/cfdocs/isblists2.cfm/opt=3,* last accessed Feb. 12, 2007.

[45] *http://www.aphis.usda.gov/brs/not_reg.html*, last accessed Feb. 12, 2007.

[46] Approved biotech crops other than HT and/or IR soybeans, corn, cotton and canola account for well under 1% of global biotech crop acreage.

of concept) of 4 phases of development (DuPont-Pioneer 2006b). USDA field trial data show that to date, DeltaMax Cotton LLC has received only two permits to conduct small field trials of GAT cotton, on 5 and 10 acres, both in 2006.[47] The small scale of these field trials confirms that GAT cotton is at an early stage of development.

Interestingly, DuPont received commercial clearance for a transgenic cotton resistant to ALS-inhibitor herbicides in 1996, but either did not try or was unable to market it.[48] (We find no record that this HT trait was ever incorporated into a commercial cotton cultivar.) Tolerance to ALS-inhibitors is the trait paired with glyphosate-tolerance in Optimum GAT. One limitation of ALS-inhibitor tolerance is the prevalence of weeds already resistant to this class of herbicides.[49] This, combined with rapidly increasing glyphosate-resistance in weeds, may limit the usefulness and marketability of Optimum GAT.

History clearly demonstrates that any given experimental biotech crop is very unlikely to become commercialized. Conduct-based solutions to correct the anticompetitive effects of a merger naturally rely on ''picking a winner.'' Given the high failure rate in agricultural biotechnology, this is a risky strategy that is very likely to fail.

4. Conclusion

Based on our analysis, the Center for Food Safety and International Center for Technology Assessment believe that the proposed merger would have a number of anticompetitive effects, including increased cotton seed prices; restricted choice of cotton seed varieties with no traits (i.e. conventional seed) or one trait; and increased obstacles to entry of and/or greater market penetration by Monsanto's cotton trait competitors. Other possible effects include an accelerated exit of smaller cotton seed firms from the market; acquisition of a uncompetitive, divested Stoneville, leading to a duopoly in seeds; harm to organic cotton growers, particularly overseas, and potentially reduced choice of organic cotton products for U.S. consumers.

However, agriculture is not software. Production of food and fiber to meet basic needs is a far more serious affair than computer operating systems. Agriculture requires competition in seeds and traits for all the reasons that apply to other industries, but also to ensure the diversity that is essential to sustain the health and productivity of American agriculture. As discussed in Sections 2.6 to 2.8, the near-monopoly in biotech traits promises a future of unprecedented reliance on a single herbicide, glyphosate. Excessive use of glyphosate leads to increasingly stubborn weeds, a threat to the cotton industry compared by one expert to the boll weevil; disease-prone, mineral deficient crops; and heightened risks of widespread yield reductions and failures. Increased use of Roundup may also endanger amphibian populations.

From an international perspective, the merger will give Monsanto, a company known for questionable and illegal activities overseas, increased access to foreign markets, particularly in cotton. Monsanto's acquisition of DPL's seed sterility technology increases the potential for eventual introduction of Terminator cotton and other crops, with adverse equity impacts on resource-poor farmers.

5. Recommendations

I. We call on the Department of justice to unconditionally oppose the acquisition of Delta and Pine Land Company by Monsanto to protect farmers from higher seed prices, reduced seed choices and other adverse impacts as outlined in this report.

II. We call on the Department of Justice to oppose future acquisitions of cotton seed firms by the oligopolists—Delta and Pine Land, Bayer and Monsanto—to avert the negative effects of increased concentration in the cotton seed industry.

III. We urge the US Department of Agriculture to resume its historical role of promoting the interests of American farmers, through:

A. Increased funding of public sector breeding efforts to supply American farmers with affordable, high-quality seed varieties in cotton and other crops, in particular conventional seed varieties neglected by the private seed industry;

B. Denial of any and all permits to entities applying to field test any crop incorporating Delta and Pine Land's Technology Protection System, or any other other genetic use restriction technologies that render the seeds of harvested plants sterile (popularly known as ''Terminator'' technology); and

C. Otherwise following the recommendations of eleven members of the USDA's Advisory Committee on Agricultural Biotechnology (ACAB) with respect to Terminator technology, as set out in a joint letter to ACAB's chair of August 25, 2000 (USDA ACAB 2000).

[47] At *http://www.tsb.vt.edu/cfdocs/fieldtests1.cfm*, search on ''Institution,'' then ''DeltaMax Cotton LLC.''

[48] Go to USDA's list of GM crops cleared for commercial use (i.e. petitions for non-regulated status granted) at *http://www.aphis.usda.gov/brs/not_reg.html*. Petition 95–256–01, for sulfonylurea tolerant cotton, line 19–51a, was cleared on Feb. 21, 1996 Sulfonylurea is an ALS-inhibitor type herbicide.

[49] The Weed Science Society of America lists 95 weeds resistant to ALS inhibitors worldwide. *http://www.weedscience.org/Summary/UspeciesMOA.asp?1stMOAlD=3&FmHRACGroup=Go.*

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## Appendix 1: Cotton Seed Market Share of Selected Companies in U.S.: 1970 to 2006

A graph appearing here in the comment is illegible upon reprinting. The graph is available at the Department of Justice Antitrust Division, 325 Seventh Street, NW., Room 215, Washington, DC 20530, (202) 514–2481, and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

## Appendix 2

Market Share of Four Largest Private Seed Firms: Cotton, Corn and Soybeans

A graph appearing here in the comment is illegible upon reprinting. The graph is available at the Department of Justice Antitrust Division, 325 Seventh Street, NW., Room 215, Washington, DC 20530, (202) 514–2481, and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

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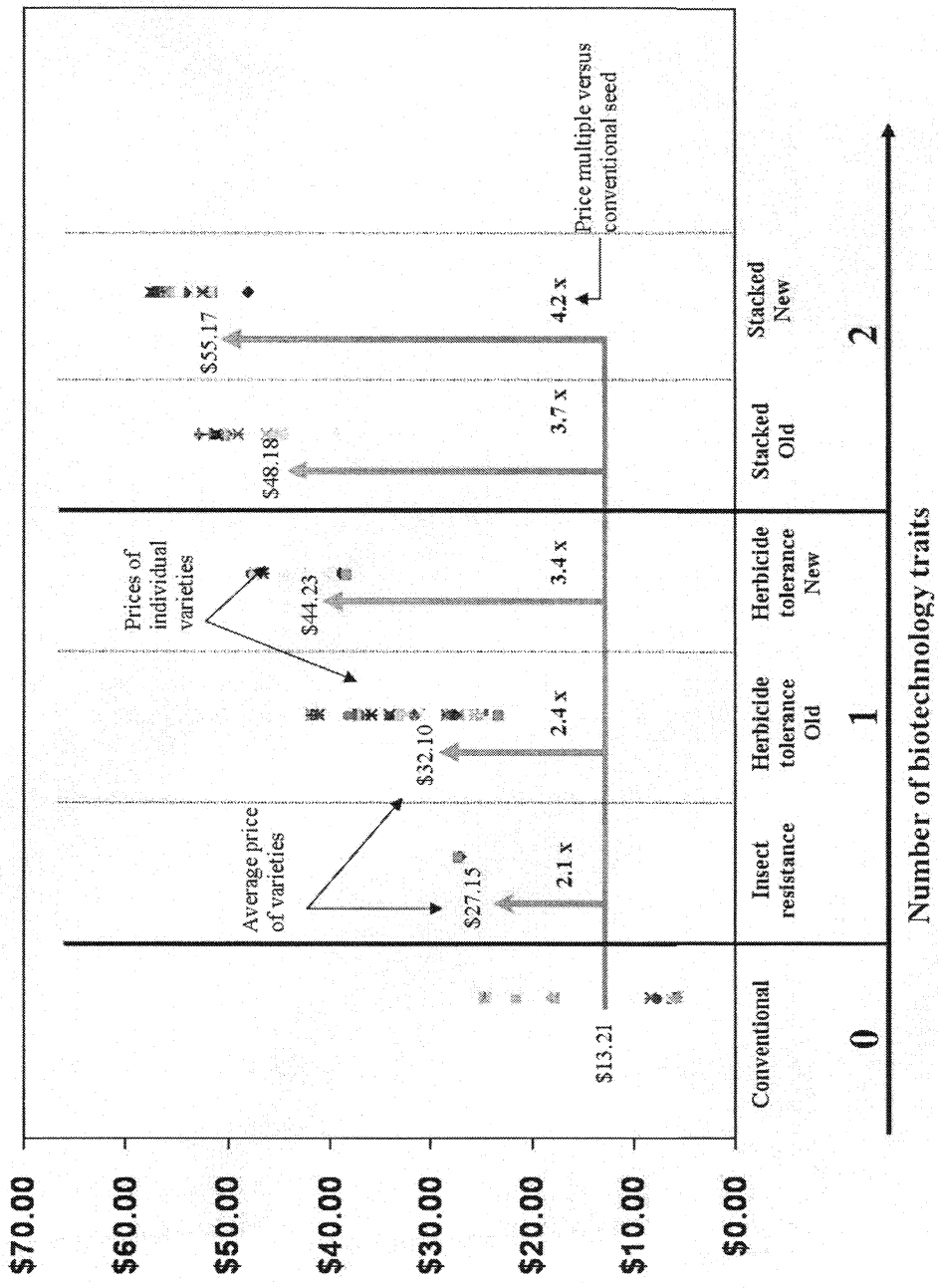
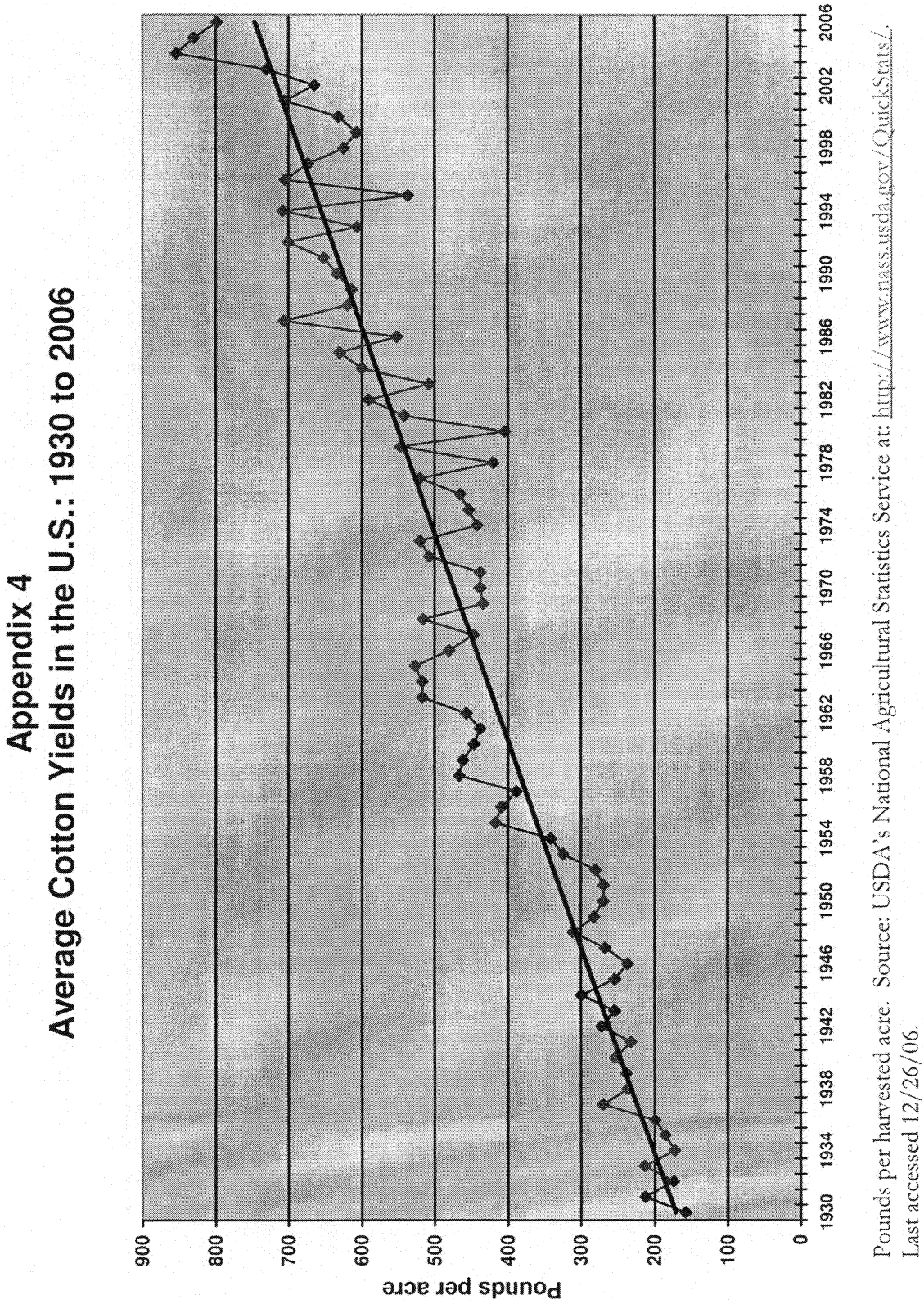
## Appendix 3

## Cost of Cotton Seed: Conventional vs. Biotech




Based on Plains Cotton Growers (2006). Prices of 140 cottonseed varieties are plotted—conventional (21), IR (2), HT Old (45), HT New (15), Stacked Old (26), Stacked New (31) — together with the average price of the varieties in each category and the increased cost versus the conventional average. Per acre price based on 40 inch crop rows and 4.0 seed/feet. See www.plainscotton.org/seed/seedindex.html.

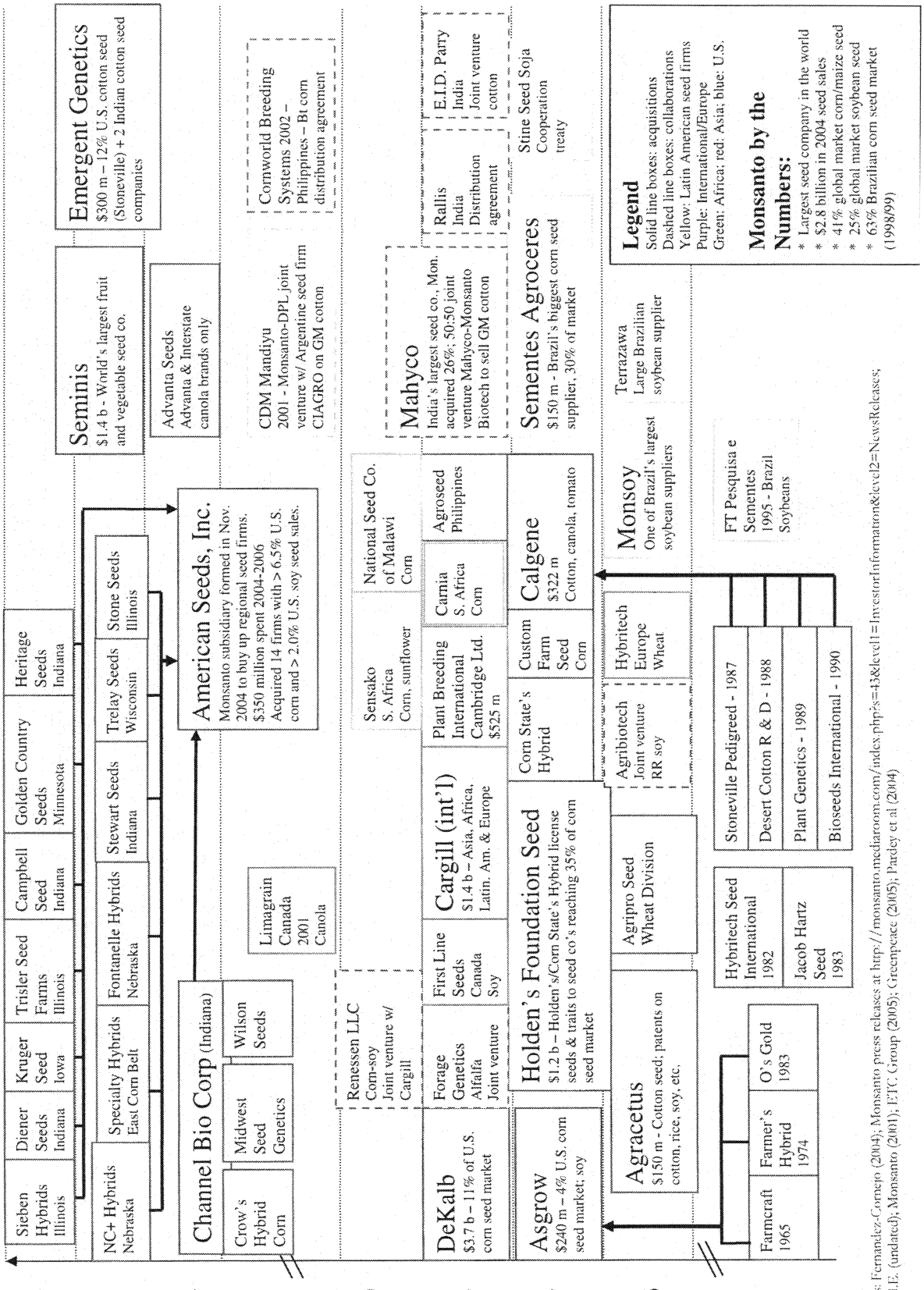



**Appendix 5**

*Acreage of Biotech Cotton Field Trials in the U.S.: 2000 to 2006*

A graph appearing here in the comment is illegible upon reprinting. The graph is available at the Department of Justice Antitrust Division, 325 Seventh Street, NW., Room 215, Washington, DC 20530, (202) 514–2481, and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

# Appendix 6 - Monsanto Acquisitions and Collaborations




Sources: Fernandez-Cornejo (2004); Monsanto press release at http://monsanto.mediaroom.com/index.php?s=43&level1=InvestorInformation&level2=NewsReleases; Hart, N.E. (undated); Monsanto (2001); ETC Group (2005); Greenpeace (2005); Pardey et al (2004)

BILLING CODE 4410–11–C

## Appendix 7—Approved Versus Commercially Grown Genetically Engineered Crops

A graph appearing here in the comment is illegible upon reprinting. The graph is available at the Department of Justice Antitrust Division, 325 Seventh Street, NW., Room 215, Washington, DC 20530, (202) 514–2481, and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

August 8, 2007.

Donna N. Kooperstein, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC 20530.

Re: *United States* v. *Monsanto Company et al.* Case No. 1:07–cv–00992.

Dear Ms. Kooperstein:

Ohio Farmers Union submits this letter to object to the DOJ's Proposed Final Judgment (''PFJ''), which allows Monsanto to acquire Delta and Pine Land Company (''Delta and Pine Land''). Monsanto's acquisition of Delta and Pine Land will have serious implications for independent family farmers throughout the state of Ohio.

Cotton seed is important to Ohio's livestock producers as a high-quality, alternative feed source. Monsanto's acquisition of Delta and Pine Land, the largest cotton seed company in the country, will give Monsanto a profound measure of control over the supply of cotton seed, especially over the transgenic cotton seed market. Competing seed trait developers will have great difficulty gaining acccess to the market. With fewer alternatives, the cost of seed to farmers is very likely to increase, adding additional economic stress to Ohio's livestock producers.

Also, Monsanto's growing dominance in the cotton markets could magnify their impact on the soybean and corn markets. Soybean and corn farmers in Ohio rely on an affordable, competitive seed market when they plant in the spring allowing them to grow food and fuels. The soybean and corn transgenic seed markets are already concentrated. This acquisition could easily drive costs up for Ohio's grain farmers and lead to increased prices for consumers. Innovation will also suffer, as competing transgenic trait developers are pushed out of the markets.

The DOJ's PFJ does not remedy the harms that will occur from Monsanto's acquisition. The divestiture of Stoneville plus 20 lines of germplasm will not take the place of an independent Delta and Pine Land with its breeding expertise and resources. The PFJ does not restore competition and is not in the public interest.

Sincerely,

Joe Logan.
*Ohio Farmer's Union.*

August 7, 2007.

Donna N. Kooperstein, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC 20530, Via fax (202–307–2784) and U.S. Mail.

RE: *United States* v. *Monsanto Company, et al.*, Case No. 1:07–cv–00992 (D.D.C., filed May 31, 2007) (Urbina, J.)

Dear Ms. Kooperstein:

The Organization for Competitive Markets (''OCM'') is an independent, nonpartisan, and nonprofit group comprised of farmers, ranchers, academics, attorneys, and policymakers dedicated to preserving and protecting competitive markets in agriculture. The OCM submits these comments pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, to register its objections to the Department of Justice's (''DOJ'') proposed final judgment (''PFJ'') regarding the acquisition by Monsanto Company (''Monsanto'') of Delta and Pine Land Company (''Delta and Pine''), the largest cotton seed company in the United States. With agricultural, consolidation and concentation occurring at an unprecedented rate, OCM is disappointed that the DOJ has once again failed to preserve competition and protect American farmers and consumers.

Monsanto's acquisition of Delta and Pine promises to substantially damage transgenic seed trait competition in cotton. Farmers throughout this country are being harmed by Monsanto's aggressive tactics aimed at denying them competitive alternatives. As the DOJ acknowledged in its complaint, Monsanto is the largest producer and supplier of cotton transgenic seed traits in the United States. Monsanto controls over 96% of the market for herbicide-tolerant cotton traits and approximately 99% of the market for insect-resistant cotton traits. Monsanto has used its monopoly power to impose significant price increases on cotton farmers, including a 229% increase in Monsanto's Roundup Ready® herbicide-tolerant trait over the past four years. The technology fees Monsanto charges farmers for its traits accounts for more than 50%, and sometimes even as much as 70%, of the cost of a bag of seed. These statistics illustrate the extent to which greater competition is needed in the cotton transgenic seed trait market where farmers are struggling under the weight of Monsanto's dominance.

Together with its separate joint development partners, Delta and Pine offers the best hope of breaking Monsanto's monopoly in cotton transgenic seed traits. As the DOJ indicated in its complaint, Delta and Pine is an attractive joint development partner because of its extensive germplasm library, personnel and facilities, and superior track record of breeding success. Also, Delta and Pine's high market shares make it an indispensable vehicle for competing trait developers to distribute their competing cotton biotech traits to farmers.

By acquiring Delta. and Pine, Monsanto will be positioned to undermine these joint development efforts, close the distribution channel for competing traits, and thereby solidify its monopoly position. The DOJ's own complaint and PFJ clearly acknowledge the very significant anticompetitive effect of Monsanto's acquisition of Delta and Pine on the future development of competing cotton traits. Yet the DOJ's proposed remedy to cure these anticompetitive effects—divestiture of Stoneville plus providing Stoneville nonexclusive access to 20 lines of germplasm and certain Monsanto cotton germplasm lines—is woefully inadequate and does not restore competition.

First, Stoneville simply lacks the required infrastructure and expertise to challenge Delta and Pine. Second, the ''divestiture'' to Stoneville of 20 lines of Delta and Pine germplasm does little to enhance Stoneville's capabilities. Putting aside that it is not even a true divestiture, these 20 lines are either in development and not commercially viable or account for only about 1% of the cotton acres planted in the Southeast and MidSouth. Plus, ongoing germplasm line improvements mean that old lines quickly become obsolete. Even if Stoneville is eventually capable of bringing competing biotech traits to market, the DOJ acknowledges that it will take 815 years for them to be commercially viable. By then, it will simply be too late and Monsanto's hegemony in transgenic seed traits will have been cemented permanently. Third, because Monsanto will have more than a 50% post-acquisition share of the highly concentrated cotton-seed market, competing trait developers may well lack the incentive to continue their efforts due to a lack of non-Delta and Pine outlets through which to license their traits.

Monsanto's acquisition of Delta and Pine also promises to have harmful spillover applications to other agricultural crops vital to our national economy. With Delta and Pine under Monsanto's control, competing trait developers will be foreclosed from market opportunities that would provide them with necessary revenue to justify the significant research and development costs associated with the development of competing traits in cotton and other crops. Encouraging and promoting alternative, competing transgenic seed traits is especially critical in key crops like corn and soy, where Monsanto already controls more than 95% of the market for herbicide-tolerant corn traits, more than 80% of the market for insect-resistant corn traits, and over 98% of the market for herbicide-tolerant soybean traits. Unless competition is preserved, Monsanto will soon be able to eliminate competition in the trait markets, to the detriment of farmers and consumers everywhere.

Promoting and preserving competition and choice in transgenic seed traits is critical to ensuring the success of the vitally important agriculture sector of the national economy. If the PFJ is approved, the opposite will occur—Monsanto's acquisition of Delta & Pine will lead to diminished competition, fewer choices, and higher prices for farmers and consumers.

Respectfully,

Keith Mudd,
*President.*

August 16, 2007.

Donna N. Kooperstein, Chief, Transportation, Energy & Agriculture Section Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC 20530.

Re: *United States* v. *Monsanto Company, et al.*, Case No. 1:07–cv–00992 (D.D.C.,

filed May 31, 2007) (Urbina, J.)

Dear Ms. Kooperstein:

We submit this letter pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, to voice our objections to the DOJ's Proposed Final Judgment (''PFJ'') which permits Monsanto to acquire Delta and Pine Land Company (''Delta and Pine Land''). The interests of Iowa's farmers, rural communities, and consumers will be harmed by Monsanto's acquisition of Delta and Pine Land.

Agriculture is a vital part of Iowa's history, environment, and economy. In 2006 and 2007, Iowa was ranked #1 in the United States in acres of corn and soybeans planted. See ''Acreage,'' National Agricultural Statistics Service, USDA (June 30, 2006, and June 29, 2007). While Monsanto's acquisition of Delta and Pine Land directly impacts the cotton markets, Monsanto's stronghold in the cotton markets will have serious effects on the corn and soybean markets as well.

Farmers and consumers benefit from competition in the marketplace. Monsanto's acquisition of Delta and Pine will end competition in cotton biotech seed traits, by cutting off competing trait developers from access to Delta and Pine's superlative breeding and distribution programs. These competing trait developers will have no incentive to invest in R&D for cotton seed traits, and they will not have the needed resources to invest in trait development for other crops, such as the key crops of corn and soybeans. With no alternatives, the cost of seed to farmers will continue to climb through the roof, and the end costs to consumers will likewise rise dramatically. Further, innovation will be stifled and seed quality will suffer.

The DOJ's PFJ does not remedy the harms that will occur from Monsanto's monopoly position. The divestiture of Stoneville plus a sell-off of a few lines of germplasm, will not take the place of an independent Delta and Pine. The PFJ does not restore competition and is not in the public interest.

Sincerely,

Carrie La Seur,
*Founder & President, Plains Justice.*

Denise O'Brien,
*President, Women, Food & Agriculture Network.*

Chris Peterson,
*President, Iowa Farmers Union.*

August 24, 2007.

Donna N. Kooperstein, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC 20530.

Re: *United States* v. *Monsanto Company et al.*, No 1:07–cv–00992 (D.D.C. filed May 31, 2007) (Urbina, J.)

Dear Ms. Kooperstein:

Pursuant to 15 U.S.C. 16(b), the Attorneys General of Virginia, Arkansas, Delaware, Kentucky, Maryland, New Mexico, North Carolina, Ohio, Oklahoma, Rhode Island, Tennessee, Utah, and West Virginia hereby submit the attached comments related to the Proposed Final Judgment pending in the above-referenced matter. Please contact me at (804) 786–6557 if you have any questions.

Sincerely,

Sarah Oxenharn Allen,
*Assistant Attorney General, Antitrust and Consumer Litigation Section, Office of the Virginia Attorney General.*

Attachment

**Comments of the Attorneys General of Virginia, Arkansas, Delaware, Kentucky, Maryland, New Mexico, North Carolina, Ohio, Oklahoma, Rhode Island, Tennessee, Utah, and West Virginia on the Proposed Final Judgment in United States v. Monsanto Company, et al.**

Pursuant to ¶ 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, the Attorneys General of Virginia, Arkansas, Delaware, Kentucky, Maryland, New Mexico, North Carolina, Ohio, Oklahoma, Rhode Island, Tennessee, Utah, and West Virginia (hereinafter, ''the Attorneys General''), submit the following comments on the Proposed Final Judgment (''PFJ'') produced to the court by the United States Department of Justice (''the United States'' or ''DOJ'') in the above-referenced matter.

**I. Introduction**

As the chief law enforcement officers of their respective states, the Attorneys General are charged with enforcing state and federal antitrust laws. The Attorneys General often are called upon to evaluate and gauge the competitive benefit or harm of proposed business acquisitions to the citizens and economies of their respective states. The Attorneys General strive to preserve fair competition, protect their citizens from unlawful restraints, and promote the development, production and distribution of alternative product choices in the marketplace. As a result, the Attorneys General have a strong interest in antitrust enforcement actions by the United States that will impact their states.

Agriculture is an important industry affecting local and state economies, as well as the Gross National Product. Its gross outputs account for more than $250 billion of the gross domestic product and more than $68 billion in exports. See ''Gross Domestic Product by Industry Accounts,'' U.S. Department of Commerce, Bureau of Economic Analysis, available at *http://www.bea.gov/industry/gpotables/gpo_action.cfm?anon=52440&table&_id=19025&format&_type=0*; ''Foreign Agricultural Trade of the United States,'' U.S. Department of Agriculture (''USDA''), available at *http://www.ers.usda.gov/Data/FATUS/monthlysummary.htm*. Cotton, together with corn and soybeans, accounts for nearly 60% of the value of all U.S. crops. See ''Crop Values—2003 Summary,'' USDA, National Agricultural Statistics Service. These three crops have a combined annual value of more than $58 billion. See ''Crops & Plants—National Statistics,'' USDA, National Agricultural Statistics Service. In 2006, the cotton market alone generated more than $5 billion in annual revenues for U.S. farmers. See DOJ Complaint (''Complaint''), at ¶ 1.

Biotechnology (alternatively, ''biotech'') has revolutionized U.S. agriculture by enabling farmers to protect crops from certain insects, the effects of herbicides, and other soil and plant conditions that evolve over time. By altering the genetic makeup of seeds to produce crops with desirable traits, such as insect resistance and herbicide tolerance, biotechnology has made it possible for farmers to increase production yields and decrease costs, particularly the costs of pesticides sprayed on crops after planting. Today, approximately 87% of cotton, 91% of soybeans, and 73% of corn grown in the United States is from genetically modified seeds. See ''U.S. Farmers Plant Largest Corn Crop in 63 Years,'' USDA, available at *http://www.nass.usda.gov/Newsroom/2007/06_29_2007.asp*.

Despite the increasingly important role of biotech seeds in U.S. agriculture, barriers to entry in the market are extremely high. Successful entry requires long lead times, large capital expenditures, highly trained and experienced personnel, retail distribution outlets, and access to a broad collection of elite germplasm (the genetic material required for the development of traits that gives the plants their characteristics. See Complaint, at ¶ 5.). Desirable traits have to be developed in laboratories, successfully crossed with varieties of elite germplasm to produce seeds that have the proven desirable qualities, and field-tested in conditions farmers actually confront. See generally Jane Dever and E. Margaret Hamill, ''Breeding: Approaches to Fiber Quality Improvement,'' 2005 EFS Systems Conference Presentations, available at *http://www.cottoninc.com/2005/ConferencePresentations*; and Monsanto.com, ''The DNA of Our Business,'' available at *http://www.monsanto.com/Monsanto/content/media/pubs/2005/MON_2005_DNA_of_our_business.pdf*. The process often requires thousands of attempts before a trait can be developed and used to breed commercial seed varieties. See Complaint, at ¶ 28. Once a trait is successfully developed, it must receive regulatory approval by multiple agencies, in both the United States and abroad, which can cost millions of dollars. Id. Market acceptance of new biotech traits also takes time. Farmers tend to be conservative in adopting new biotech seed varieties, and therefore these seed varieties often take several seasons to attain maximum penetration and market share in various regions. As the United States acknowledges in its Complaint, the development of a single trait ''typically takes eight to twelve years and costs over $40 million.'' Id. at ¶ 28. See also id. at ¶ 43. Because of these extraordinarily high barriers to entry, there are a limited number of companies in the world capable of successfully developing biotech traits.

Monsanto Company (''Monsanto'') is the dominant biotech trait company in the United States. Delta and Pine Land Company (''DPL'') is the largest cotton seed company in the United States. The Attorneys General are concerned that Monsanto's acquisition of DPL will eliminate competition in the market for cotton biotech traits and seeds, stifle innovation and product choice, and result in supra-competitive prices to U.S. farmers and consumers. Monsanto will be able to eliminate competition in cotton biotech trait development and commercialization by foreclosing other companies from developing

cotton biotech traits with DPL or from incorporating competing traits into DPL seeds. The Attorneys General also are concerned that the acquisition will have ripple effects that will stall or eliminate the development of competing biotech traits for other crops, such as corn and soybeans, allowing Monsanto to maintain a degree of control over U.S. agriculture that has never before been possessed by a single company. The acquisition also may allow Monsanto to engage in exclusionary business practices in cotton. Such exclusionary business practices could include long-term, highly restrictive licensing agreements, ''loyalty'' programs, bundling requirements, and other restrictions that effectively could prevent competing cotton traits from coming to market.

While DOJ recognizes the serious anticompetitive effects of the acquisition, its PFJ fails to sufficiently remedy those effects and, therefore is not in the public interest.

**II. The Acquisition Cements Monsanto's Current Monopoly Position in Biotech Traits and Will Give the Company Market Power in Cotton Seeds**

No other company has experienced Monsanto's level of success in the development, production and distribution of biotech traits. It is undisputed that Monsanto enjoys large monopoly shares with respect to every commercially important trait in cotton, corn and soybean seeds. In 2006, over 96% of all cotton planted with biotech traits contained Monsanto traits, while 95% contained only Monsanto traits—the 1% difference is attributable to Monsanto traits that were combined with either Bayer CropScience or Dow's Phytogen traits. See Complaint, at ¶ 3. See also Bill Frecse, ''Cotton Concentration Report: An Assessment of Monsanto's Proposed Acquisition of Delta and Pine Land,'' International Center for Technology Assessment, February 2007, at 8–9.

DPL also has had unparalleled success, with a 50% national share of the U.S. cotton seed market. See Evren Ergin, ''DPL-Monsanto: Antitrust/Merger Analysis,'' Lehman Brothers, September 12, 2006, at 3. In the cotton-growing states of the South, where biotech traits are especially valued, DPL's dominance is even greater. It holds an 86% market share in the Southeast region, which includes the states of Florida, Georgia, Alabama, South Carolina, North Carolina, and Virginia, and a 73% market share in the MidSouth region, which includes the states of Louisiana, Arkansas, Mississippi, Tennessee, and Missouri. See ''Cotton Varieties Planted, 2006 Crop,'' USDA, Agricultural Marketing Service Cotton Program, September 22, 2006, available at *http://www.ams.usda.gov/cottonrpts/MNPDF/mp_cn833.PDF*. These market shares are slightly higher for DPL seeds that include biotech traits—an 87% share of traited cottonseeds in the Southeast and a 79% share in the MidSouth. See Complaint, at ¶ 4.

DPL's success reflects the high quality of its germplasm library and its proven ability to develop and commercialize new cotton biotech seed varieties. See id. at ¶ 26. As a result, DPL is the primary and most important vehicle for biotech trait developers to get competing cotton biotech traits to market. No other seed company can match DPL as a development partner because of DPL's extensive and unique library of elite germplasm—which is suitable across a full range of geographic regions—brand name loyalty, and industry-leading technical personnel with unmatched breeding expertise and capabilities. See Competitive Impact Statement, at ¶ II(B)(2). In fact, DPL claims to have three times the breeding capabilities of any other seed company in the world. See Tom Jagodinski, ''Delta and Pine Land'' (presentation, 2006 Merrill Lynch Agricultural Chemicals Conference, June 14, 2006 (Slide #3)). In 2006 alone, DPL spent almost $25 million, or 6% of revenues, on research and development. See Delta & Pine Land Co., Annual Report (Form 10–K)(November 14, 2006), at 42.

The Attorneys General are concerned that, if approved, the PFJ will enhance Monsanto's monopoly power in cotton biotech trait markets. Requiring Monsanto to divest itself of its current cotton seed company, Stoneville [1], as a condition to approve the acquisition, the United States only strengthens Monsanto's monopoly position by permitting Stoneville's 12% market share to be traded for DPL's market shares of 50–86%. Further, Monsanto secures complete control of DPL's breeding programs and seed sales. As a result, Monsanto could, and likely will, undermine DPL's collaborations with Monsanto's competitors to the detriment of U.S. cotton farmers and consumers.

**III. The Acquisition Has Serious Anticompetitive Effects**

The acquisition threatens to substantially reduce competition in the development, production and distribution of cotton biotech traits and seeds. DPL, in partnership with other companies, is a significant trait development competitor of Monsanto, which now will have the ability and incentive to eliminate, or at least significantly delay, DPL's trait development partnerships with competitors. See Competitive Impact Statement, at ¶ 11(A). As the United States acknowledges in its Complaint, DPL ''is an attractive partner that is well suited to quickly introduce new trait technologies due to the strength and breadth of its germplasm base and breeding programs as well as its technical service capabilities, know-how, brand recognition and market position.'' Complaint, at ¶ 26. No other seed company has the combination of assets and experience to foster trait development collaborations and bring to market competing cotton biotech traits and seeds.

Monsanto's acquisition of DPL likely will end DPL's development partnerships, eliminating the only near-term challenges to Monsanto's monopoly position in cotton biotech. DeltaMax, DPL's joint venture with E.I du Pont de Nemours and Company (''DuPont'') and Pioneer Hi-Bred International, Inc. (''Pioneer'') to develop a trait known as OptimumTM GATM, would provide cotton farmers a competitive herbicide-tolerant trait alternative for the first time. However, the Attorneys General understand that DuPont and Pioneer have exercised their right to terminate DeltaMax as a result of DOJ's decision to allow their competitor, Monsanto, to consummate its merger agreement with DPL during the pendency of the Tunney Act proceeding. DeltaMax's demise is a serious loss of potential competition that threatened Monsanto's dominance in herbicide-tolerant traits. Herbicide tolerance is considered the most important biotech trait by farmers in most states. See ''2007 Acreage Report,'' USDA, National Agricultural Statistics Service, at 25, available at *http://usda.mannlib.cornell.edu/usda/current/Acre/Acre-06-29-2007.pdf* (report generally shows that market penetration for herbicide-tolerant seeds is higher in most states than that of insect-resistant seeds). Because of DeltaMax's termination, Monsanto's cotton herbicide-tolerant trait dominance is assured for the foreseeable future. The Attorneys General are not aware of the current status of DPL's collaboration with Syngenta AG to develop an insect-resistant cotton biotech trait called VipCotTM, which would pose a competitive threat to Monsanto's almost complete monopoly of insect-resistant traits in cotton.

The acquisition also harms competition by eliminating DPL as the vehicle for biotech trait developers to commercialize and distribute competing cotton biotech traits. Once under Monsanto's control, DPL will lack the incentive to sell competing traits at the expense of Monsanto's monopoly biotech traits. With its 50–86% shares of the highly concentrated cotton seed market, DPL is the primary engine of biotech trait developers to bring competing new traits to market through finished seeds. Without an independent DPL, competing cotton biotech trait developers may not have sufficient non-DPL outlets to license their traits.

In addition, as DOJ acknowledged in its Complaint at ¶ 27, certain aspects of Monsanto's current license provisions to seed companies harm competitors by prohibiting combining, or ''stacking,'' of non-Monsanto biotech traits with Monsanto traits. The Attorneys General understand that Monsanto's licenses with regional corn and soybean seed companies, which, like DPL, are known as independent seed companies, contain similar restrictions. These restraints severely limit the ability of Monsanto licensees to deal with Monsanto competitors and appear to lack any legitimate business purpose. The PFJ addresses this competitive concern by requiring Monsanto to modify its biotech trait licenses with cotton seed companies to remove the stacking prohibitions. See Competitive Impact Statement, at ¶ 111(C). The Attorneys General applaud this remedy. Unfortunately, as discussed below, this remedy, along with the divestiture of Stoneville to Bayer

[1] With only four significant seed companies prior to the PFJ (DPL, Bayer CropScience, Stoneville and Dow's Phytogen Seed Company) and a handful of smaller seed companies, the cotton seed market is highly concentrated. Stoneville, which was recently acquired by Bayer CropScience in connection with the PFJ, has a 12% share of the cotton seed market, making it the third largest cotton seed company. See Evren Ergin, ''DPL-Monsanto: Antitrust/Merger Analysis,'' Lehman Brothers, September 12, 2006, at 3.

CropScience (''Bayer'') and the nonexclusive licensing of a small number of germplasm lines, will not restore the competition that will be lost as a result of Monsanto's acquisition of DPL.

If biotech trait developers are unable to commercialize and distribute to farmers the competing traits they develop, they will not be able to justify their significant research and development expenditures and will be deterred from entering the cotton biotech market. The lack of opportunities in cotton biotech may spill over to other important cash crops where Monsanto also enjoys a dominant position in biotech traits. The cottonseed traits that DPL is developing in partnership with Monsanto's competitors have numerous cross-crop applications. Denying biotech trait developers market opportunities in cotton will deprive them of the revenues required to sustain expensive research and development programs in other important crops, such as corn and soybeans. Knowledge that otherwise would have been transferable to other crops will be lost, putting other trait developers at a competitive disadvantage. Monsanto's domination in cotton also may increase its leverage over retailers, particularly national retailers who sell DPL cotton seed in the South, possibly making it even more difficult to compete effectively with the bundles Monsanto packages that include crop protection chemicals and seeds across multiple crops.

These anticompetitive effects are more significant today than in 1999, when DOJ blocked Monsanto's first attempt to acquire DPL. Biotech traits are more important and valued today than in 1999. DPL's market shares, particularly in the cotton-growing regions of the South, are even higher today. Compare ''Cotton Varieties Planted, 1999 Crop'' and ''Cotton Varieties Planted, 2006 Crop,'' USDA, Agricultural Marketing Service—Cotton Program. Unlike 1999, however, Monsanto's monopoly traits were about to face real and meaningful competition in the near future as a result of joint development partnerships that did not exist then. The harm to competition today is real and immediate, and regrettably, the PFJ does not remedy it.

## IV. The PFJ Does Not Remedy the Anticompetitive Effects

In its Complaint, the United States acknowledges the significant anticompetitive effects that the acquisition will have on the development, production and distribution of cotton biotech traits and seeds. Complaint, at ¶¶ 37–42. The United States concludes that the acquisition violates the antitrust laws because it ''will eliminate competition between DPL and Monsanto for the development, breeding, and sale of traited cottonseed.'' Id. at ¶ 41. Nonetheless, the United States has agreed to settle its action against Monsanto and DPL by requiring Monsanto to (1) divest Stoneville to an approved buyer, which DOJ has subsequently approved to be Bayer, and (2) provide nonexclusive access to Stoneville of (a) twenty lines of elite DPL germplasm and (b) certain Monsanto cotton germplasm lines. See Competitive Impact Statement, at ¶ 111(A). The settlement fails to remedy the likely anticompetitive effects of the acquisition.

### *A. The Divestiture of Stoneville Fails To Preserve Meaningful Competition in Cotton*

A divested Stoneville falls far short of replicating the assets and expertise that DPL offers. The United States has recognized that ''[a] company with a large collection of high quality, or elite, germplasm has a competitive advantage because the company has the ability to identify the best genetic material and use it in a wide variety of possible crossing combinations, resulting in a greater likelihood of developing a successful variety.'' Complaint, at ¶ 16. As DOJ acknowledges, DPL has ''over ninety years of germplasm development.'' Id. at ¶ 17. DPL also has ''the largest cotton germplasm collection, with by far the greatest track record of success in the important MidSouth and Southeast regions, and an extensive breeding program,'' and ''more breeding capabilities than any competitor.'' Id.

The new Bayer-Stoneville entity will have access to only 20 lines from DPL's extensive germplasm library, the largest collection of cotton germplasm in the United States. Complaint, at ¶ 17. Stoneville was first acquired by Monsanto in 1996, see Competitive Impact Statement, at ¶ II (B)(3), but then sold in 1999 and reacquired in 2005 as part of Monsanto's efforts to develop a cotton seed unit. See Complaint, at ¶ 32. The divestiture of Stoneville appears to conflict with DOJ's own Antitrust Division Policy Guide To Merger Remedies (''Policy Guide'') (Oct. 2004). Those guidelines make clear that ''[t]he Division favors the divestiture of an existing business entity that already has demonstrated its ability to compete in the relevant market.'' See id. at 12. As Monsanto's cotton seed unit, Stoneville has only a limited track record in demonstrating its ''ability to compete in the relevant market.'' In fact, the divested ''parts'' that the PFJ pieces together have never been operated as a unit and would require substantial reconfiguration. Even if Stoneville could operate as a single unit with the licensed parts, it necessarily will have to start from scratch to duplicate DPL's success in the breeding of commercial varieties—a process DOJ acknowledges takes at least eight to ten years. See Complaint, at ¶ 15. The time and expense required to establish the Bayer-Stoneville combination as a viable and effective partner for competing biotech trait developers necessarily precludes any real competition with Monsanto for a period of time that is well outside of the two-year window typically used by the federal competition authorities to define effective new entry under ¶ 12 of the 1992 Horizontal Merger Guidelines, jointly issued by DOJ and the Federal Trade Commission. In the meantime, Monsanto will use its head start in the development and distribution of cotton biotech traits to its competitive advantage.

Furthermore, it is clear that DPL's technology, infrastructure, breeding capabilities and expertise are significantly superior to Stoneville's. The PFJ does not remedy the disparity by providing the divested Stoneville with any of DPL's breeding expertise, personnel, facilities or development assets that the United States acknowledged made DPL an attractive development partner. See Complaint, at ¶ 26. In this respect, the PFJ is inconsistent with DOJ's Policy Guide, which provides that ''[a]n existing business entity should possess not only all the physical assets, but also the personnel, customer lists, information systems, intangible assets, and management infrastructure necessary for the efficient production and distribution of the relevant product.'' See Policy Guide, at 12. Without the breeding assets and personnel that have made DPL the partner of choice for biotech trait developers, a divested Stoneville cannot replace DPL's ability to bring to market biotech traits that can compete with Monsanto's monopoly varieties.

In addition, Stoneville has been divested to Bayer, a trait development competitor of Monsanto. Because of this, Stoneville can never duplicate DPL's unique position as an independent cotton seed company that can use its successful and high-quality germplasm to partner with several different biotech companies to develop viable competitive alternatives to Monsanto's monopolies in traits. Even if it were technically possible for a rival trait company to successfully develop a biotech trait that could compete against a Monsanto trait, it must have a seed vehicle with which to partner to commercialize the trait and bring it to market so that farmers could actually benefit from having the choice of which trait to buy. Stoneville will not have the motivation, as DPL did, to partner with outside trait developers since it is owned by a trait development company, so there will no longer be a feasible alternative to DPL's independence as a cottonseed company and a trait development partner.

Even apart from the loss of an independent cottonseed company, DOJ also implicitly recognizes that a divested Stoneville is not the equivalent of DPL by requiring Monsanto to provide Stoneville access to 20 lines of DPL germplasm. However, the availability of 20 lines of DPL germplasm does not ''restore competitive conditions the merger would remove.'' Policy Guide, at 4. The PFJ makes clear that Stoneville's access to those germplasm lines is non-exclusive. See Competitive Impact Statement, at ¶ III(A)(2). Thus, even post-acquisition, Monsanto retains the right to sell the most popular seeds from those lines and even preclude their use with non-Monsanto cotton biotech traits. This also is inconsistent with DOJ's Policy Guide, which recognizes that permitting a merged firm ''to retain access to the critical intangible assets may present a significant competitive risk.'' Policy Guide, at 16. Because the PFJ fails to enhance Stoneville's breeding capabilities, access to such lines will not challenge Monsanto's monopoly position, even with respect to any of those 20 lines.

### *B. Access to Identified Cotton Germplasm Ignores the Evolving Nature of Biotech Traits and Seeds*

The PFJ's requirement that Monsanto provide access to certain lines of cotton germplasm lines does not remedy the

anticompetitive effects of the acquisition for yet another reason. The PFJ ignores the reality that elite germplasm is constantly being improved upon to enhance the effectiveness of the underlying traits to address evolving plant, soil, and other conditions that change over time. As a result, the best germplasm today becomes obsolete in a relatively short period of time. See generally declining market shares of existing germplasm lines as newer lines are introduced in ''Cotton Varieties Planted, 1999 Crop'' through ''Cotton Varieties Planted, 2006 Crop,'' USDA, Agricultural Marketing Service—Cotton Program. Thus, to stay competitive, cotton biotech trait developers must have access to new and improved lines of germplasm.

The availability of certain existing lines of cotton germplasm cannot replace the need for Monsanto's competitors to have ongoing access to improved germplasm. One of DPL's strengths has been its ability to continually develop new lines of elite germplasm. Once DPL falls captive to Monsanto's control, access by Monsanto's competitors to DPL's next generation of germplasm will terminate. With an overwhelming monopoly in biotech traits, Monsanto will have no incentive or obligation to make DPL's next generation of germplasm available to competitors. See Complaint, at ¶¶ 16–17.

In addition, the 20 lines of cotton germplasm that the PFJ licenses to Stoneville constitute only a very small subset of DPL's extensive germplasm library. Some of those lines are merely under development, and there is no guarantee that they will be commercially successful in the future. Further, the PFJ does not provide the divested Stoneville with any of DPL's facilities or personnel with expertise handling those lines. Instead, it allows Monsanto to retain access to those lines, as well as the facilities and expertise DPL has employed to develop them. Consequently, the availability of a limited number of cotton germplasm lines does not guarantee or enhance Stoneville's ability to effectively compete against Monsanto.

**V. The Acquisition Potentially Allows Monsanto To Engage in Exclusionary Business Practices**

The acquisition potentially allows Monsanto to engage in exclusionary behavior, which could include a series of acquisitions of independent seed companies and germplasm providers to enhance its monopoly position in both seeds and traits; long-term, highly restrictive licensing agreements that encourage the sale of Monsanto's biotech traits exclusively; licensing restrictions that prevent independent seed companies from combining Monsanto biotech traits with non-Monsanto traits; and bundling rebates on seeds, traits and chemicals to exclude competitors from retail distribution channels. These restrictions potentially could stymie innovation, limit product choices and result in higher prices. With DPL under its control, Monsanto will have the ability to foreclose competing cotton biotech traits from entering the cotton seed markets. Monsanto's monopolization of the cotton biotech trait market also may create an incentive to impose supra-competitive technology fees for seeds containing Monsanto's traits, which would eliminate any efficiencies farmers otherwise would realize from the merger or in a competitive cotton biotech trait market.

The Attorneys General are concerned that the acquisition of DPL may permit Monsanto to maintain and consolidate its monopoly position in biotech traits. The lack of viable competition in cotton traits, coupled with Monsanto's market power in the other seed trait markets, compels a closer examination of the potential anticompetitive effects of Monsanto's business practices in all markets.

**VI. Conclusion**

The PFJ fails to remedy the anticompetitive effects of the acquisition in the markets for cotton biotech traits. If approved in its present form, the acquisition will further cement Monsanto's monopoly in those markets with severe and unwarranted consequences for farmers and consumers. With Monsanto's huge head start, biotech trait developers will have no incentive to expend the necessary research and development costs that are required for the successful entry of competing traits and seeds. Current joint development efforts with DPL will terminate or stagnate—eliminating the only near-term opportunities for meaningful competition in cotton—innovation will be stifled, and cotton farmers and consumers will suffer from the lack of market choices and the imposition of supra-competitive product prices.

The adverse consequences of the acquisition also will extend beyond cotton. The loss of revenue that the acquisition will cause in cotton will impact the ability of trait developers to bring to market biotech traits in other crops, such as corn and soybeans. Research and development efforts investigating traits in cotton that could be developed and incorporated into other crops now will be lost.

The PFJ fails to effectively restore competition in the market for cotton biotech traits, and should be rejected.

Respectfully Submitted,

Robert F. McDonnell,
*Attorney General of Virginia, Office of the Attorney General, 900 E. Main Street, Richmond, VA 23219.*

Comments of the Attorneys General on Proposed Final Judgment in United States v. Monsanto Company, et al.

Respectfully submitted,

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Comments of the Attorneys General on Proposed Final Judgment in United States v. Monsanto Company, et al.

Respectfully submitted,

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Comments of the Attorneys General on Proposed Final Judgment in United States v. Monsanto Company, et al.

**On Behalf of the Commonwealth of Kentucky**

Respectfully submitted,

Gregory D. Stumbo,
*Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, (502) 696–5300.*

Comments of the Attorneys General on Proposed Final Judgment in United States v. Monsanto Company, et al.

Respectfully submitted,

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Comments of the Attorneys General on Proposed Final Judgment in United States v. Monsanto Company, et al.

Respectfully submitted,

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*Attorney General of New Mexico, Office of the Attorney General, 408 Galisteo Street, Santa Fe, New Mexico 87501.*

Comments of the Attorneys General on Proposed Final Judgment in United States v. Monsanto Company, et al.

Sincerely,

Roy Cooper,
*Attorney General of North Carolina, Office of the Attorney General, 114 W. Edenton Street, 9001 Mail Service Center, Raleigh, NC 27699–9001.*

Comments of the Attorneys General on Proposed Final Judgment in United States v. Monsanto Company, et al.

Respectfully submitted,

Marc Dann,
*Attorney General of Ohio, Office of the Attorney General, 30 East Broad Street, Columbus, OH 43215.*

Comments of the Attorneys General on Proposed Final Judgment in United States v. Monsanto Company, et al.

Respectfully submitted,

W.A. Drew Edmondson,
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Comments of the Attorneys General on Proposed Final Judgment in United States v. Monsanto Company, et al.

Respectfully submitted,

Patrick C. Lynch,
*Attorney General of Rhode Island, Department of the Attorney General, 150 South Main Street, Providence, RI 02903.*

Comments of the Attorneys General on Proposed Final Judgment in United States v. Monsanto Company, et al.

Respectfully submitted,

Robert E. Cooper, Jr.,
*Attorney General of Tennessee, Office of the Attorney General and Reporter, 425 Fifth Avenue North, Nashville, TN 37202.*

Comments of the Attorneys General on Proposed Final Judgment in United States v. Monsanto Company, et al.

Respectfully submitted,

Mark L. Shurtleff,
*Attorney General of Utah, Office of the Attorney General of Utah, State Capitol Complex, Suite E320, Salt Lake City, Utah 84114–2320.*

Comments of the Attorneys General on Proposed Final Judgment in United States v. Monsanto Company, et al.

Respectfully submitted,

Darrell v. McGraw, Jr.,
*Attorney General of West Virginia, Office of the Attorney General, State Capitol, Charleston, WV 25305.*

August 20, 2007.

Ms. Donna N. Kooperstein, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC 20530.

Re: *United States* v. *Monsanto Company, et al., Case No. 1:07-cv.00992.*

Dear Ms. Kooperstein:

Preserving competition in agriculture biotechnology markets is essential for greater choice and lower costs to Texas farmers and consumers. The lack of competition in these markets hurts farmers and consumers, who wind up paying higher prices. Today, Texas farmers and consumers are already struggling in the face of rapid agricultural consolidation and concentration. The latest example of this dangerous trend is Monsanto's acquisition of Delta & Pine Land, which promises to strike a crushing blow to the Texas cotton industry. It is for this reason that we submit this letter and urge the court to reject the Department of Justice's ''Proposed Final Judgment'' regarding this acquisition.

Cotton is a critical thread in the fabric of the Texas and national economy. Texas is the #1 producer of cotton in the United States. Each year Texas farmers plant over 6 million acres of cotton seed—the 2006 crop had a value of over $1.4 billion. Cotton growers in Texas and throughout the country are increasingly reliant on biotechnology, which allows farmers to grow cotton resistant to certain insects and tolerant of certain herbicides. In 2007, 87% of cotton acreage in the U.S. was planted with biotech seed varieties. See United States Department of Agriculture, U.S. Farmers Plant Largest Corn Crop in 63 Years (*http://www.nass.usda.gov/Newsroom/2007/06_29_2007.asp*).

Monsanto currently enjoys monopolies in cotton traits. Monsanto controls approximately 96% of herbicide tolerant cotton traits and approximately 99% of insect resistant cotton traits. Monsanto has already used its dominant position to dramatically increase the prices farmers are paying for these traits. This ultimately leads to consumers paying higher prices for products containing cotton.

If Monsanto is permitted to acquire Delta & Pine Land, the largest cotton seed company in the world, there will be even more anticompetitive consequences for Texas cotton farmers and consumers throughout the country. First, Monsanto will shut out all competition in cotton traits because all of the competing cotton traits are being developed with Delta & Pine Land, which Monsanto will now control. Second, once it acquires Delta & Pine Land, Monsanto will control over 50% of the national cotton seed market and even higher percentages in key cotton growing areas such as the South Central and Southeast regions of the U.S. Given its dominance in cotton traits and cotton seeds, Monsanto will be able to effectively kill competition in cotton and leave farmers and consumers with no choice except the monopolist Monsanto's products.

The remedy devised by the Department of Justice to remedy the clear anticompetitive effects of acquisition will do little to protect farmers and consumers. Requiring Monsanto to divest a weak cotton seed company and approximately 20 lines of germplasm is entirely inadequate to replace the loss of an independent, thriving competitor to Monsanto in the development of biotechnology traits and a critical distribution channel for those traits.

With its acquisition of Delta & Pine Land, Monsanto is poised to enhance its position as an agricultural titan. This deal will significantly diminish competition and stifle innovation in the cotton biotech seed trait markets and cotton seed market, leading to higher prices for farmers and consumers. Because the Department of Justice's proposed final judgment will not restore much needed competition in cotton, it should be rejected.

Sincerely,

Heethe Burleson, On Behalf of the Associated Cotton Growers, Crosbyton, Texas.

Arvil Campbell, For the Texas Farmers Union.

Jeff Turner, On Behalf of the Willacy Co-op Gin, Raymondville, Texas.

Chris Breedlove, For Olton Co-Op Gin, Olton, Texas.

Glen Campbell, On Behalf of Lorenzo Co-Operative Gins, Inc., Lorenzo, Texas.

Johnny Shepard, On Behalf of Citizens Co-Op Gin, Shallowater, Texas.

Randy Arnold, Founder, High Plains Cotton Growers Association, Crosbyton, Texas.

Jonathan Hernandez, For the Texas Oaks Neighborhood Association, Austin, Texas.

Lynda Rodriguez, For the South San Antonio Chamber of Commerce, San Antonio, Texas.

Benny Robertson, Seed and Feed Supplier, Star Feed and Seed Supply, Spur, Texas.

Larry Thornbough, On Behalf of Trans-Pecos Cotton Association, Coyanosa, Texas.

Sid Brough, On Behalf of EdCot Co-Op Gin, Odem, Texas.

Glen Ivens, On Behalf of Cotton Center Farmers Co-Op Gin, Cotton Center, Texas.

Tom Byars, On Behalf of the Lockney Co-Op Gin, Lockney, Texas.

Bobby Moss, For the Fiber-Tex Co-Op Gin, Brownfield, Texas.

Charles Macha, United Cotton Growers, Levelland, Texas.

Glenn Klesel, On Behalf of Posey Gin, Slaton, Texas.

Scott LaRue, For the Blackland Prairie Gin, Deport, Texas.

August 27, 2007

Ms. Donna N. Kooperstein, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC 20530.

Re: *United States* v. *Monsanto Company, et al, Case No. 1:07–cv–00992.*

Dear Ms. Kooperstein:

Monsanto's acquisition of Delta & Pine Laud promises to stifle innovation, limit choice for Wisconsin farmers and consumers, and ultimately drive prices higher.

The agricultural sector is already highly concentrated, including biotechnology traits where one company—Monsanto—controls monopoly trait shares in cotton, corn, and soybeans. By acquiring Delta & Pine Land, Monsanto is effectively removing its principal cotton trait competitor and positioning itself to limit farmer choice to Monsanto branded traits.

In addition, by acquiring Delta & Pine Land and its 50% market share of the cotton seed market, Monsanto will control not only cotton traits but cotton seeds. Permitting one company to be the dominant company in cotton traits and cotton seeds is just bad policy and increases the vulnerability of farmers and consumers by subjecting them to the whims of one company.

The Department of Justice's proposed consent decree regarding this acquisition offers little hope in terms of greater competition and increased choice for Wisconsin farmers and consumers. The consent decree, which requires Monsanto to divest Stoneville (with its limited market share) and a few lines of germplasm, does not even come close to replacing an independent Delta & Pine Land, and is inadequate to restore competition. Wisconsin Farmers Union therefore urges the Department of Justice to withdraw its consent decree or, if it does not do so, for the court to reject it.

Sincerely,

Susan Beitlich,
*President.*

[FR Doc. E8–5578 Filed 4–3–08; 8:45 am]

**BILLING CODE 4410–11–M**

Federal Register

Friday,
April 4, 2008

# Part III

# Department of Health and Human Services

## Centers for Medicare & Medicaid Services

## 42 CFR Parts 431, 440, and 441
## Medicaid Program: Home and Community-Based State Plan Services; Proposed Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Parts 431, 440, and 441**

**[CMS–2249–P]**

**RIN 0938–AO53**

# Medicaid Program: Home and Community-Based State Plan Services

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the Medicaid regulations to define and describe home and community-based State plan services implementing new section 1915(i) of the Social Security Act as added by section 6086 of the Deficit Reduction Act of 2005.

**DATES:** *Comment date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 3, 2008.

**ADDRESSES:** In commenting, please refer to file code CMS–2249–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov*. Follow the instructions for ''Comment or Submission'' and enter the filecode to find the document accepting comments.

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2249–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2249–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to either of the following addresses:

a. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

*Submission of comments on paperwork requirements.* You may submit comments on this document's paperwork requirements by following the instructions at the end of the ''Collection of Information Requirements'' section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Kathy Poisal, (410) 786–5940.

**SUPPLEMENTARY INFORMATION:** *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov*. Follow the search instructions on that Web site to view public comments.

Comments received timely also will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

## I. Background

[If you choose to comment on issues in this section, please include the caption ''BACKGROUND'' at the beginning of your comments.]

On February 8, 2006, the Deficit Reduction Act of 2005 (DRA 2005) (Pub. L. 109–171) was signed into law. Section 6086 of the DRA is entitled ''Expanded Access to Home and Community-Based Services for the Elderly and Disabled.'' Section 6086(a) of the DRA adds a new section 1915(i) to the Social Security Act (the Act) that allows States, at their option, to provide home and community-based services (HCBS) under their regular State Medicaid plans. This option allows States to receive Federal financial participation (FFP) for services that were previously eligible for the funds only under waiver or demonstration projects, including those under sections 1915(c) and 1115 of the Act. Section 1915(i) of the Act sets forth several conditions that States must meet, and actions they must take, if they choose to add State plan HCBS to services available through the State plan. Section 6086(b) of the DRA provides for the Secretary to develop, through the Agency for Healthcare Research and Quality, quality of care measures to assess Medicaid HCBS.

Under section 1915(i) of the Act, States can provide HCBS to individuals who require less than institutional level of care and who would therefore not be eligible for HCBS under 1915(c) waivers. Section 1915(i) of the Act does not link HCBS to institutional level of care or require cost savings over institutional services, permitting States to provide the State Plan HCBS benefit to individuals whether or not they meet an institutional level of care, and based on need for support rather than population characteristics.

Section 1915(i) of the Act does impose other limits not required by section 1915(c) waivers, including a prescribed set of services States may choose to offer, and exclusion of individuals with income above 150 percent of the Federal Poverty Level (FPL). HCBS under the State plan are limited to elderly and disabled individuals.

HCBS are available in some States in demonstration programs under section 1115 of the Act. Each demonstration under section 1115 of the Act is unique with respect to the Medicaid requirements waived, type and scope of services offered and population served, and cannot be generally characterized. Therefore, we are not including HCBS provided under section 1115

demonstrations in this discussion except to note that the section 1115 authority has been used by States to provide services in the home and community. States can also provide Medicaid long-term care services to individuals in the community through the mandatory State plan home health benefit, and the optional State plan personal care services benefit. These services are occasionally referred to as home and community-based, but are not included as HCBS in this discussion. The section 1915(i) benefit does not diminish the State's ability to provide any of these existing community services. States opting to offer State plan HCBS under section 1915(i) of the Act can continue to provide the full array of community services under section 1915(c) waivers, section 1115 demonstration programs, mandatory State plan home health benefits, and the optional State plan personal care services benefit.

Before 1981, the Medicaid program provided limited coverage for long-term care services in non-institutional, community-based settings. Medicaid's complex eligibility criteria and other factors made institutional care much more accessible than care in the community.

Medicaid HCBS were established in 1981 as an alternative to care in Medicaid institutions, by permitting States to waive certain Medicaid requirements upon approval by the Secretary. Section 1915(c) of the Act was added to title XIX by the Omnibus Budget Reconciliation Act of 1981 (OBRA 1981) (Pub. L. 97–35). Programs of HCBS under section 1915(c) of the Act are known as ''waiver programs'', or simply ''waivers'' due to the authority to waive Medicaid requirements.

Since 1981, the section 1915(c) HCBS waiver program has afforded States considerable latitude in designing services to meet the needs of people who would otherwise require institutional care. In 2007, approximately 300 HCBS waivers under section 1915(c) of the Act serve over 1 million elderly and disabled individuals in their homes or alternative residential community settings. States have used HCBS waiver programs to provide numerous services designed to foster independence; assist eligible individuals in integrating into their communities; and promote self-direction, personal choice, and control over services and providers. The addition of section 1915(i) of the Act affords some of the same flexibility through the State plan.

Another important aspect to this background is the passage of the Americans with Disabilities Act of 1990 (ADA) and the *Olmstead* v. *L.C.*, 527 U.S. 581 (1999) U.S. Supreme Court decision. In particular, Title II of the ADA prohibits discrimination on the basis of disability by State and local governments and requires these entities to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. In applying the most integrated setting mandate, the U.S. Supreme Court ruled in *Olmstead* v. *L.C.* that unnecessary institutionalization of individuals with disabilities may constitute discrimination under the ADA. Under *Olmstead*, States may not deny a qualified individual with a disability a community placement when: (1) Treating professionals determine that community placement is appropriate; (2) the community placement is not opposed by the individual with a disability; and (3) the community placement can be reasonably accommodated.

In the following discussion and the proposed regulation, we refer to particular home and community-based service(s) offered under section 1915(i) of the Act as ''State plan HCBS'' or simply ''HCBS''.[1] We refer to the ''State plan home and community-based services benefit'' when describing the collective requirements of section 1915(i) of the Act that apply to States electing to provide one, or several, of the authorized HCBS. We choose to use the term ''benefit'' rather than ''program'' to describe section 1915(i) of the Act to avoid possible confusion with HCBS waiver programs. The State plan HCBS benefit shares many features with section 1915(c) waiver programs, and in other respects is similar to other State plan services, but differs from both in important respects.

The Secretary has delegated administration of the Medicaid program, including the State plan HCBS benefit furnished under Medicaid, to the Centers for Medicare & Medicaid Services (CMS). Effective January 2007, States that demonstrate they meet certain requirements may choose to furnish HCBS under the State plan. States may elect to provide HCBS through waiver programs, State plan services, or both. The availability of the State plan HCBS benefit does not foreclose, or otherwise restrict, a State's ability to operate its HCBS waiver programs, nor does the availability of HCBS waiver services within a State affect its ability to add the HCBS benefit to its State plan.

[1] Note that the abbreviation HCBS does not distinguish between singular and plural. Where this could be confusing, we spell out home and community-based service(s).

*A. Overview of the State Plan HCBS Benefit*

The following overview describes the provisions of the DRA in the order they are presented in section 1915(i) of the Act. The proposed regulation and the explanation of each proposed requirement in section II. are arranged so that related requirements are grouped for clarity.

1. General Provisions of the State Plan Amendment Option To Provide Home and Community-Based Services for Elderly and Disabled Individuals

Section 1915(i)(1) of the Act grants States the option to provide, under the State plan, the services and supports listed in section 1915(c)(4)(B) of the Act governing HCBS waivers, not including the ''other services'' described therein. The services specifically listed in section 1915(c)(4)(B) of the Act are as follows: Case management, homemaker/home health aide, personal care, adult day health, habilitation, respite care, and for individuals with chronic mental illness: Day treatment, other partial hospitalization services, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility). The HCBS may not include payment for room and board (see additional discussion in section I.D.3.).

We interpret the statute as authorizing the services as titled in section 1915(c)(4)(B) of the Act. Therefore, we would expect States to define State plan HCBS with sufficient specificity that the nature and scope of the service clearly relates to those listed in section 1915(c)(4)(B) of the Act.

Section 1915(i) of the Act explicitly provides that State plan HCBS may be provided without determining that, but for the provision of such services, individuals would require the level of care provided in a hospital, a nursing facility (NF), or an intermediate care facility for the mentally retarded (ICF/MR) as is required in section 1915(c) HCBS waivers. While HCBS waivers must be ''cost-neutral'' to Medicaid, no cost neutrality requirement applies to the section 1915(i) State plan HCBS benefit. States are not required to produce comparative cost estimates of institutional care and the State plan HCBS benefit. This significant distinction allows States to offer HCBS to individuals whose needs are substantial, but not severe enough to qualify them for institutional or waiver services, and to individuals for whom

there is not an offset cost savings in NFs, ICFs/MR, or hospitals.

While eligibility for State plan HCBS does not require that the individual would otherwise need an institutional level of care, the services are intended to prevent progression to institutionalization and to enable individuals to receive needed services in their own homes, or in alternative living arrangements in what is collectively termed the ''community'' in this context. (See additional discussion in section I.D.2. regarding institutions not considered to be in the community, and in which State plan HCBS will not be available.)

Section 1915(i)(1) of the Act requires that in order to receive State plan HCBS, individuals must be eligible for Medicaid under an eligibility group covered by the State plan. This section does not create a new eligibility group. Individuals who have not been found eligible for Medicaid cannot be enrolled in the State plan HCBS benefit, even if they otherwise meet the requirements for the benefit. In addition, individuals may not be enrolled in the State plan benefit if their income exceeds 150 percent of the FPL.[2] In determining whether the 150 percent of the FPL requirement is met, the regular rules for determining income eligibility for the individual's eligibility group apply, including any more liberal income disregards used by the State for that group under section 1902(r)(2) of the Act.

2. Needs-Based Criteria

In contrast to the institutional level of care requirement for eligibility in HCBS waivers, section 1915(i)(1)(A) of the Act requires States to impose needs-based criteria for eligibility for the State plan HCBS benefit. Additionally, the State may establish needs-based criteria for each specific State plan home and community-based service that an individual would receive.

Section 1915(i) of the Act does not authorize States to waive the requirement of section 1902(a)(10)(B) of the Act relating to comparability, as does section 1915(c) of the Act. Waiver of comparability is a key feature of HCBS waivers, permitting the State to target the HCBS benefit to certain populations by defining which groups will be eligible for waiver services, and by having separate waivers for different groups. Through use of eligibility criteria, States can provide services for certain high need target groups that are not comparable to the services received by other Medicaid beneficiaries in the State. Under section 1915(i) of the Act, States are not authorized to establish eligibility criteria in order to target services to certain populations. Since comparability may not be waived, States must determine eligibility for State plan HCBS on the basis of the following criteria only:

- The individual is eligible for medical assistance under the State plan.
- The individual's income does not exceed 150 percent of the FPL.
- The individual resides in the home or community.
- The individual meets the needs-based criteria established by the State.

Needs-based criteria for an individual service are subject to the same requirements as needs-based eligibility criteria, and may not limit or target any service based on age, nature or type of disability, disease, or condition.

The heading of section 1915(i) of the Act describes the State plan HCBS benefit as ''for Elderly and Disabled Individuals.'' However, section 1915(i) of the Act does not include definitions of the terms ''elderly'' or ''disabled'' in setting forth eligibility criteria, and instead requires eligibility to be based on need and on eligibility for medical assistance under a State plan group. Thus, we believe that the use of these terms in the statute is descriptive. Individuals who are eligible for medical assistance under a group covered in the State's plan and who meet the needs-based eligibility criteria for State plan HCBS will have needs stemming either from a disability or from being elderly. We note that section 1902(b)(1) of the Act prohibits the Secretary from approving any plan for medical assistance that imposes an age requirement of more than 65 years as a condition of eligibility.

The statute does not define ''needs-based.'' We are proposing to define the nature of needs-based criteria to distinguish them from targeting criteria, which are not permitted under the statute. However, we would propose to provide States with the flexibility to define the specific needs-based criteria they will establish. (See discussion below of section 1915(i)(1)(D) of the Act.)

Section 1915(i)(1)(B) of the Act additionally requires that the needs-based criteria for determining whether an individual requires the level of care provided in a hospital, NF, or ICF/MR or under a waiver of the State plan be more stringent than the needs-based eligibility criteria for the State plan HCBS benefit. ''Stringency'' is not defined in the statute. States establish stringency in defining particular needs-based criteria. There is no expectation that States will modify institutional levels of care to make them more stringent, in order to satisfy this requirement. If the State's existing criteria for receipt of institutional and HCBS waiver care are needs-based, and more stringent than the criteria it will use for the State plan HCBS benefit, the State need not modify its institutional criteria. We anticipate that States will adopt the much simpler strategy of defining the new State plan HCBS needs-based eligibility criteria at a less stringent level than existing institutional criteria. In order to implement the State plan HCBS benefit, States may need to add needs-based criteria to their institutional level of care requirements, if none presently exist. Section 1915(i) of the Act does not require that such added needs-based institutional level of care criteria necessarily result in excluding individuals who would be served without the added criteria. In fact, the purpose of section 1915(i) of the Act appears to be to expand access to HCBS to individuals who are not at an institutional level of care, rather than to reduce access to institutional and waiver services.

We note that section 1915(i) of the Act does not modify the statutory coverage provisions of institutional benefits. States must be cautious not to establish more stringent needs-based criteria for hospitals, NFs or ICFs/MR that would reduce access to services mandated elsewhere in title XIX, since those other provisions of the statute were not amended. For example, the NF benefit is defined in section 1919(a)(1) of the Act as an institution that is primarily engaged in providing to residents skilled nursing care, rehabilitation services, and ''[o]n a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities.'' To the extent that needed health-related care and services above the level of room and board are not available in the community, the NF institutional benefit must remain available to all Medicaid eligible individuals described in section 1919(a)(1)(C) of the Act.

We interpret the reference to hospitals in section 1915(i)(1)(B) of the Act to

[2] The statute refers to ''the poverty line as defined in section 2110(c)(5)''. The poverty guidelines are formally referenced as ''the poverty guidelines updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).'' Commonly referred to as the ''Federal Poverty Level'' or ''Federal Poverty Line'' (FPL), we will adopt the term FPL in this regulation.

mean facilities certified by Medicaid as hospitals that are providing long-term care services or services related to the HCBS to be provided under the State plan HCBS benefit. General acute care Medicaid hospital services are not subject to level of care determinations by the State.

We interpret the reference in section 1915(i)(1)(B) of the Act ''under any waiver of such plan'' to apply to section 1915(c) waivers, as well as those section 1115 waivers that include HCBS. Section 1915(c) waivers by definition will have more stringent criteria than the State plan HCBS benefit, as the waivers are required to use level of care assessments equivalent to one or more of the institutional levels of care.

In summary, the needs-based eligibility criteria for the State plan HCBS benefit must have the effect of potentially admitting to the benefit some individuals who do not meet the needs-based criteria for institutionalized care, and may admit to the benefit individuals who do meet the institutional needs-based eligibility criteria. We note that individuals who meet eligibility requirements for both an institutional benefit and the State plan HCBS benefit must be offered a choice of either benefit.

3. Number Served

Section 1915(i)(1)(C) of the Act contains two provisions regarding the number of individuals served. The first provision requires a State to provide to the Secretary a projection of the number of individuals expected to receive services. If this projection is exceeded, section 1915(i)(1)(D)(ii) permits the State to constrict its needs-based eligibility thresholds for State plan HCBS. The second provision allows the State to impose a maximum limit to the number of individuals to be served through the State plan HCBS benefit. The latter provision carries with it authority for the State to establish waiting lists for the State plan HCBS benefit.

Section 1915(i)(1)(C)(i) of the Act requires that the State submit projections of the number of individuals to be provided HCBS, in the form and manner, and upon the frequency as the Secretary specifies. We would propose to follow the practice used in HCBS waivers to calculate the number served as unduplicated persons receiving services during a 12-month period. We would specify that States annually submit both the projected number of individuals to be served and the actual number of individuals served in the previous year. We refer to individuals served under the benefit and included in the annual number served as having been enrolled in the benefit. The statute refers to ''enrollment'' in section 1915(i)(1)(D)(ii) of the Act concerning Adjustment Authority. Because there are a number of steps involved in an individual initiating service under the State plan HCBS benefit, ''enrollment'' is a useful term to indicate individuals for whom those steps have been completed, services have been authorized or provided, and who will be accounted for in the annual number served under the benefit.

If the State exceeds its enrollment estimate, the State would report the number of individuals actually served in the required annual report to the Secretary, and revise the estimate for succeeding years.

Section 1915(i)(1)(C)(ii) of the Act provides an option for the State to limit the number of eligible individuals to whom it will provide the State plan HCBS benefit. The limit does not need to be the same as the projected number of individuals to be served. As with the projected number, we would specify that the limit be expressed in terms of the number of unduplicated recipients eligible to receive the State plan HCBS benefit, for a period of 12 months. We would propose that States may establish limits for individuals to be served annually. States may establish a phase-in and phase-out schedule for limits. The State may also elect to place a limit on the number of individuals to be served at any given time in the year (''slot'' methodology), so long as the State also provides the annual report of actual unduplicated recipients.

We would specify that the State submit a State plan amendment to initiate or adjust the limit on the number of individuals to be served. Consistent with 42 CFR 430.20, we would permit a service expansion to become effective on the first date of the calendar quarter in which an approvable amendment is received in CMS.

A State electing to use a waiting list must develop policies for establishing and maintaining the list, if it elects to establish a limit to the number of individuals served. We do not believe it would be appropriate for us to describe waiting list policies that must operate in each State. Rather, we would require the State to assure that its policies are published with opportunity for comment, equitable, and meet all applicable State and Federal requirements. Those requirements include but are not limited to Medicaid provisions such as timely evaluation and right to fair hearing; civil rights protections such as the State's compliance with the Americans with Disabilities Act (ADA) and the decision of the United States Supreme Court in *Olmstead* v. *L.C.* and, in some cases, other judicial decisions or procedures for court monitoring. Waiting list policies will also be affected by the option in section 1915(i)(3) of the Act for the State to elect not to comply with the requirement for statewideness (see discussion in section I.14. of this proposed rule).

4. Independent Evaluation

Section 1915(i)(1)(D) of the Act sets forth a requirement for an individual evaluation of need for each person applying for the State plan HCBS benefit. The statute here uses the term ''assessment,'' while sections 1915(i)(1)(E) and (H) of the Act refer to the initial eligibility determination as the ''independent evaluation.'' We would use the latter term for consistency. ''Independent evaluation,'' as understood in light of section 1915(i)(1)(H) of the Act, means free from conflict of interest on the part of the evaluator.

The independent evaluation applies the needs-based HCBS eligibility criteria (established by the State according to section 1915(i)(1)(A) of the Act), to an applicant for the State plan HCBS benefit. Section 1915(i)(1)(D) of the Act establishes that determining whether an individual meets the needs-based eligibility criteria specified in sections 1915(i)(1)(A) and (B) of the Act requires an individualized and independent evaluation of each person's support needs and capabilities. We interpret ''needs and capabilities'' to mean a balanced approach that considers both needs and strengths. However, the words ''capability'' and ''ability'' are historically connected with a deficit-oriented approach to assessment, which is the opposite of the statute's person-centered approach. Therefore, we would refer to needs and strengths in this discussion and in the regulation.

We believe that the statute distinguishes needs-based criteria from other possible descriptors of an individual's medical condition or demographic situation, for example a diagnosis. We interpret needs-based criteria as describing the individual's particular need for support, regardless of the conditions and diagnoses that may cause the need. Therefore, we would propose that a useful test of whether a criterion is needs-based will be the type of data that would be needed to complete that item in an evaluation. A needs-based criterion requires the evaluator to determine the unique requirements of the applicant, through interview if necessary.

Institutional/waiver level of care (LOC) criteria in some States do not include needs-based criteria. We believe that States must include a needs-based evaluation component of the institutional/waiver LOC determination process so that stringency of those criteria can be compared to stringency of eligibility criteria for the State plan HCBS benefit.

Section 1915(i)(1)(D) of the Act indicates that the independent evaluation may ''take into account'' the inability of the individual to perform two or more activities of daily living (ADLs), (which the statute defines by reference to section 7702B(c)(2)(B) of the Internal Revenue Code of 1986), or the need for significant assistance to perform these activities. The State may also assess other risk factors it determines to be appropriate in determining eligibility for, and receipt of, HCBS. The statute does not limit the factors a State may take into account in the evaluation. For example, instrumental activities of daily living (IADLs) could be considered.

5. Adjustment Authority

Section 1915(i)(1)(D)(ii) of the Act permits the State to adjust the needs-based criteria described in section 1915(i)(1)(B) of the Act in the event that enrollment exceeds the annual maximum number of individuals that the State has projected it would serve. The purpose of such an adjustment would be to revise its needs-based criteria in order to reduce the number of individuals in the State who would be eligible for the HCBS benefit. To preserve the requirement of 1915(i)(1)(B) that more stringent needs-based criteria be in place for institutionalized care, the adjusted eligibility criteria must still be less stringent than those applicable to institutional levels of care. If the State chooses to make this adjustment, it must provide at least 60 days written notice to the Secretary and the public, stating the revisions it proposes.

While the adjustment authority is granted to States without having to obtain prior approval from the Secretary, we believe that the statute requires the State to amend the State plan to reflect the adjusted criteria. We believe that the State's adjustment authority does not prevent the Secretary from disapproving a State plan amendment that fails to comply with the statute and regulations. Therefore, the Secretary would evaluate the State's adjusted criteria for compliance with the provisions of this subparagraph and all requirements of subpart K. A State may implement the adjusted criteria as early as 60 days after notifying all required parties. Section 430.16 provides the Secretary 90 days to approve or disapprove a State plan amendment, or request additional information. If the State implements the modified criteria prior to the Secretary's final determination with respect to the State plan amendment, the State would be at risk for any actions it takes that are later disapproved.

After needs-based criteria are adjusted under this authority, the statute provides for a period during which individuals previously served under the State plan HCBS benefit would continue to receive HCBS. Section 1915(i)(1)(D)(ii)(II) of the Act provides that an individual who is receiving HCBS before the effective date for modified needs-based criteria, (based on the most recent version of the criteria in effect before the modification), must be deemed by the State to continue to be eligible for State plan HCBS for a period of at least 12 months, beginning on the date on which the individual first received a covered State plan HCBS. In order to ensure that an individual who has been receiving HCBS for a year or more would not be subject to immediate discontinuation of service, we are proposing to apply the phrase ''at least'' in this context to require that regardless of the length of time HCBS has been provided, the State must continue to deem the individual eligible for services for no less than 60 days after official notification of all required parties.

The statute does not provide any new remedy for individuals who will lose services due to the adjustment in eligibility criteria for the HCBS benefit. However, the requirements of 42 CFR subpart E would apply. Loss of eligibility for the HCBS benefit does not affect eligibility for other services for which the individual would be eligible under the State plan.

We interpret section 1915(i)(1)(D)(III) of the Act to require that if the State chooses to modify the needs-based criteria under the adjustment authority of section 1915(d)(1)(D)(ii) of the Act, the eligibility criteria for institutional levels of care (hospital, NF, ICF/MR, and HCBS waiver services) applied by the State may be no less stringent than those that were in effect before the inception of the State plan HCBS benefit. Criteria for determining whether an individual requires an institutional level of care must also be more stringent than the adjusted needs-based eligibility criteria for the State plan HCBS benefit.

Finally, we conclude that the State may choose to modify its needs-based criteria at any time through the usual process of a State plan amendment, whether or not the projected enrollment is exceeded.

6. Independent Assessment

Section 1915(i)(1)(E) of the Act describes the relationship of several required functions. Section 1915(i)(1)(E)(i) of the Act refers to the independent evaluation of eligibility in section 1915(i)(1)(A) and (B), emphasizing the independence requirement. Section 1915(i)(1)(E)(ii) of the Act introduces the requirement of an independent assessment following the independent evaluation. Thus, there are two steps to the process: the eligibility determination, which requires the application of the needs-based criteria, and the assessment for individuals who were determined to be eligible under the first step, to determine specific needed services and supports. The assessment also applies the needs-based criteria for each service (if any). Like the eligibility evaluation, the independent assessment is based on the individual's needs and strengths. More specifically, both physical and mental needs and strengths are assessed. These requirements describe a person-centered assessment including mental health, which will take into account the individual's total support needs as well as need for the HCBS to be offered. The State must use the assessment to: determine the necessary level of services and supports to be provided; prevent the provision of unnecessary or inappropriate care; and establish a written individualized plan of care.

In order to achieve the three purposes of the assessment listed above, the assessor must be independent; that is, free from conflict of interest with providers, with the individual and related parties, and with concern for budget. HCBS provided under the State plan may be limited only by the needs-based criteria and medical necessity, not budget controls. Therefore, we would propose specific requirements for independence of the assessor in accord with section 1915(i)(1)(H)(ii) of the Act, and we would apply these also to the evaluator and the person involved with developing the plan of care, where the effects of conflict of interest would be equally deleterious. These considerations of independence inform the discussion below under section 1915(i)(1)(H)(ii) of the Act regarding conflict of interest standards.

Section 1915(i)(1)(F) of the Act provides detailed requirements for the independent assessment:

- An objective evaluation of the individual's inability to perform two or more ADLs, or the need for significant assistance to perform such activities is

required. We do not interpret ''objective'' to refer to the independence required of the assessor as discussed above, but to refer to an additional requirement for reliance on some level of valid measurement appropriate to the ADLs. For example, an occupational therapy (OT) or physical therapy (PT) evaluation could be required, the results of which would be utilized by the assessor. We note that the trained assessor is not necessarily responsible for performing the objective evaluation, but should make sure that the objective evaluation is performed by qualified individuals. We do not propose methods to achieve this requirement, as the nature of the HCBS to be provided and the needs-based criteria for the State plan HCBS benefit will determine the appropriate means of evaluating ADLs.

Section 1915(i)(1)(F) of the Act defines ADLs in terms of section 7702B(c)(2)(B) of the Internal Revenue Code of 1986, which includes the following: Bathing, dressing, toileting, transferring, eating, and continence. This section of the Internal Revenue Code does not define the terms ''inability'' or ''significant assistance.'' While States have some flexibility to define these factors, we interpret ''inability'' to mean need for total support to perform an ADL, and ''significant assistance'' to mean assistance from another individual or from assistive technology necessary for the successful performance of the task.

An objective evaluation of ability to perform two or more ADLs is a required element of the assessment but only a suggested element of the eligibility evaluation. We conclude that partial or complete inability to perform two or more ADLs is not a statutory prerequisite to receive State plan HCBS, but is a required element of the assessment.

- A face-to-face evaluation of the individual by an assessor trained in the assessment and evaluation of persons whose physical or mental conditions trigger a potential need for HCBS. To fulfill this statutory requirement, we would propose that the State shall develop standards and determine the qualifications necessary for agencies and individuals who will perform independent assessments and be involved with developing the plans of care.
- Consultation with any responsible persons appropriate to the individual and the needed supports, including family, spouse, guardian, or healthcare and support providers. We do not believe the examples listed in the statute to be prescriptive or limiting. The assessor must give the individual and, if applicable, the individual's authorized representative, the opportunity to identify appropriate persons who should be consulted during this process. The role of the assessor is to facilitate free communication from persons relevant to the support needs of the individual, while protecting privacy, and promoting the wishes and best interests of the individual. In necessary circumstances, such as telephone communication with parties not available for the meeting, consultations are not required to be performed in person or at the same time and place as the face-to-face evaluation, so long as any ancillary contacts are with persons the individual has identified, are divulged and discussed with the individual/representative, and documented.
- An examination of the individual's relevant history, medical records, and care and support needs.
- Knowledge of best practices, and research on effective strategies that result in improved health and quality of life outcomes. The statute requires that the examination of the individual's history, medical records, and care and support needs be guided by this knowledge, and we would propose that this evidence-based approach should apply to the entire process for assessment and plan of care development.
- If the State offers the option of self-direction and the individual so elects, the assessment should include gathering the information required to establish self-direction of services. We do not propose to require States to conduct a separate or additional assessment process for self-direction.

As long as States comply with all provisions related to conducting the eligibility evaluation, independent assessment, and developing the plan of care, States have flexibility in determining whether they will require that the functions be performed as one activity by a single agency or individual, or whether they wish to separate those functions and have different entities involved.

7. Plan of Care

Section 1915(i)(1)(G) of the Act requires that the State plan HCBS benefit be furnished under an individualized plan of care based on the assessment. The statute describes a person-centered planning process, which can only be achieved when States affirmatively and creatively support individuals in the planning process. We would propose certain requirements for developing the plan of care, but note that the degree to which the process achieves the goal of person-centeredness can only be known with appropriate quality monitoring by the State.

Unless the State has elected to impose a limit on the number of individuals it would serve through its State plan HCBS benefit, the State must make the services available to all eligible individuals as they are assessed to need them. We conclude that the statute permits determining the level of services required by an individual only according to assessment of the individual's need, not according to available funds. Individuals who qualify for HCBS may not be compelled to receive them. Individuals may exercise their freedom to choose among qualified providers in the planning process.

The State Medicaid agency may delegate other agents to develop the plan of care, but remains responsible for ensuring compliance with all requirements and must approve each plan of care developed.

Section 1915(i)(1)(G)(ii)(I)(aa) of the Act requires that the plan of care is developed in consultation with the individual. The requirements for who is consulted in developing the plan of care parallel those describing who may be consulted during the assessment process.

Section 1915(i)(1)(G)(ii)(I)(bb) of the Act requires that the development of the plan of care take into account the extent of, and need for family or other supports for the individual, and section 1915(i)(1)(G)(ii)(II) of the Act requires that the individualized plan of care identify needed services. We interpret these provisions to indicate that natural supports are explicitly included in the plan of care. This means that individuals with equivalent need for support but differing levels of family or other natural supports may be authorized for different levels of HCBS. In the context of person-centered planning and consultation with natural supports, we conclude that the statute requires that the plan of care should neither duplicate, nor compel, natural supports.

Section 1915(i)(1)(G)(ii)(III) of the Act provides that plans of care will be reviewed at least annually and upon significant change in the individual's circumstances. We interpret this provision to indicate that diagnostic or functional changes are not required in order to adjust a plan of care. Changes in external factors such as gain or loss of other supports may trigger a review. We would require revision of the plan of care if the review indicates that revision is appropriate. By ''annually,'' we mean not less often than every 12

months. Finally, we would relate this requirement to the independent assessment, since developing or revising the plan of care is based on the assessment. We therefore would propose that the independent assessment (number 6. above) is required at least annually, and when needed upon change in circumstances, in order to comply with the requirement to review plans of care with that frequency.

8. Self-Direction

Section 1915(i)(1)(G)(iii)(I) and (II) provides that States may offer enrolled individuals the option to self-direct some or all of the State Plan HCBS that they require. Many States have incorporated elements of self-direction into section 1915(c) waiver programs as well as section 1115 demonstration programs. Self-directed State plan HCBS allow States another avenue by which they may afford individuals maximum choice and control over the delivery of services, while comporting with all other applicable provisions of Medicaid law. We have urged all States to afford waiver participants the opportunity to direct some or all of their waiver services. With the release of an updated, revised section 1915(c) waiver application in 2005, we refined the criteria and guidance to States surrounding self-direction (also referred to as participant-direction), and established a process by which States are encouraged, to whatever degree feasible, to include self-direction as a component of their overall HCBS waiver programs. While section 1915(i) of the Act does not require that States follow the guidelines for section 1915(c) waivers in implementing self-direction in the HCBS State plan benefit, we anticipate that States will make use of their experience with 1915(c) waivers to offer a similar pattern of self-directed opportunities with meaningful supports and effective protections. Individuals who choose to self-direct will be subject to the same requirements as other enrollees in the State plan HCBS benefit.

Section 1915(i)(1)(G)(iii)(II) of the Act defines self-direction, and requires that there be an assessment and plan of care. We do not interpret these requirements to indicate assessments and plans in addition to those required in sections 1915(i)(1)(F) and (G) of the Act. Accordingly, we would propose that the requirements for a self-directed plan of care at section 1915(i)(1)(G)(iii)(III) of the Act be components of the assessment and plan of care required for all enrollees in the State plan HCBS benefit.

Section 1915(i)(1)(G)(iii)(III) of the Act contains specific requirements for the self-directed plan of care, for which we describe proposed regulations in Section II. of this proposed rule. The proposed regulations are consistent with our requirements for self-direction under section 1915(c) HCBS waivers. Section 1915(i)(1)(G)(iii)(III)(dd) of the Act requires that the plan of care be developed with a person-centered process, which we would propose to require of all plans of care for the State plan HCBS benefit.

Section 1915(i)(1)(G)(iii)(IV) of the Act describes certain aspects of a self-directed budget, which we have termed budget authority. Section 1915(i)(1)(G)(iii)(III)(bb) of the Act provides for self-directed selecting, managing, or dismissing of providers of the State plan HCBS, which we term employer authority. The proposed rule explains both budget authority and employer authority in a manner consistent with Section 1915(c) HCBS waiver policy.

Individuals require information and assistance to support them in successfully directing their services. Therefore, we would require States to design and provide functions in support of self-direction that are individualized according to the support needs of each enrollee. These functions should include information and assistance consistent with sound principles and practice of self-direction, and financial management supports.

Section 6087 of the DRA also amended the Act to add a new section 1915(j), that permits States to provide medical assistance for the ''Optional Choice of Self-Directed Personal Assistance Services (Cash and Counseling).'' Section 6087 of the DRA is similar, but more expansive than, the self-direction provisions in section 6086 of the DRA. States should carefully examine the opportunities for providing self-directed HCBS under either or both sections 1915(i) or 1915(j) of the Act, depending on the goals and objectives of their Medicaid programs.

9. Quality Assurance

Section 1915(i)(1)(H)(i) of the Act requires the State to ensure that the State plan HCBS benefit meets Federal and State guidelines for quality assurance, which we interpret as assurances of quality improvement. Consistent with current trends in health care, the language of quality assurance has evolved to mean quality improvement, a systems approach designed to continuously improve care and prevent or minimize problems prior to occurrences. This approach to quality is consistent with guidelines developed by CMS in the *CMS Quality Improvement Roadmap* and *The Medicaid/SCHIP Quality Strategy*. Guidelines for quality improvement have also been made available through CMS policies governing section 1915(c) HCBS waivers.

Additionally, section 6086(b) of the DRA requires the Secretary to act through the Agency for Healthcare Research and Quality to develop program performance and quality of care measures for Medicaid HCBS. The Secretary is to use the indicators and measures to assess and compare State plan HCBS, particularly with respect to the health and welfare of the recipients of the services.

We would require States to have a quality improvement strategy, and to measure and maintain evidence of quality improvement, including system performance and individual quality of care indicators approved or prescribed by the Secretary. We would require States to make this information available to CMS upon request.

10. Conflict of Interest

Section 1915(i)(1)(H)(ii) of the Act provides that the State will establish conflict of interest standards for the independent evaluation and independent assessment. For reasons described above under independent assessment, we believe that the same independence is necessary for those involved with developing the plan of care. In this discussion, we will refer to persons or entities responsible for the independent evaluation, independent assessment, and the plan of care as ''agents'' to distinguish them from ''providers'' of home and community-based services.

The design of services, rates and payment, and method of administration by the State Medicaid agency all may contribute to potential conflicts of interest. These contributing factors can include obvious conflicts such as incentives for either over-or under-utilization of services, subtle problems such as interest in retaining the individual as a client rather than promoting independence, or practices that focus on the convenience of the agent or service provider rather than being person-centered.

The independent agent must not be influenced by variations in available funding, either locally or from the State. Within the services the State decides to offer, the plan of care must offer to each enrollee the home and community-based services for which they demonstrate need. The plan of care must be based on medical necessity only, not funding levels. When local

entities directly expend funds or direct allocated resources for services, in accordance with § 433.53(c)(2), the State must have a mechanism to ensure that availability of local funds does not affect access to services, for example, using State resources to compensate for variability in local funding. However, States may elect not to apply statewideness requirements, making the benefit available only in selected localities, possibly those that can provide greater resources.

We would require States to define conflict of interest standards, to include criteria that reflect our experience with the issue in administering HCBS waivers, and that reflect the principles of section 1877 of the Act.

We are aware that in certain areas there may be only one provider available to serve as both the agent performing independent assessments and developing plans of care, and the provider of one or more of the home and community-based services. To address this potential problem we would propose to permit providers in some cases to serve as both agent and provider of services, but with guarantees of independence of function within the provider entity. In certain circumstances, we may require that States develop ''firewall'' policies, for example, separating staff that perform assessments and develop plans of care, from those that provide any of the services in the plan; and meaningful and accessible procedures for individuals and representatives to appeal to the State. We would not permit States to circumvent these requirements by adopting State or local policies that suppress enrollment of any qualified and willing provider. We do not believe that under any circumstances determination of eligibility for the State plan HCBS benefit should be performed by parties with an interest in providers of HCBS. We invite comment on practical solutions to this important balance of independence and access.

11. Eligibility Redeterminations; Appeals

Section 1915(i)(1)(I) of the Act requires the State to conduct redeterminations of eligibility at least annually. We interpret ''annually'' to mean not less than every 12 months. The State must conduct redeterminations and appeals in the same manner as required under the State plan. States must grant fair hearings consistent with the requirements of part 431, subpart E.

12. Option for Presumptive Eligibility for Assessment

Section 1915(i)(1)(J) of the Act gives States the option of providing for a period of presumptive eligibility, not to exceed 60 days, for individuals the State has reason to believe may be eligible for the State plan HCBS benefit.

We interpret this provision as follows:

- ''Presumptive'' we interpret to indicate that medical assistance will be available for evaluation even when an individual is subsequently found not to be eligible for the State plan HCBS benefit.
- ''Eligibility'' does not connote eligibility for Medicaid generally, as this provision ''shall be limited to medical assistance for carrying out the independent evaluation and assessment'' under section 1915(i)(1)(E) of the Act. For clarity, we would refer to this limited option as ''presumptive payment''. Individuals not eligible for Medicaid may not receive State plan HCBS.
- ''Evaluation and assessment'' under section 1915(i)(1)(E) of the Act, is described as evaluation for eligibility for the benefit and assessment to determine necessary services. We believe the statutory phrase ''and if the individual is so eligible, the specific home and community-based services that the individual will receive'' is further describing the assessment under section 1915(i)(1)(E) of the Act for which presumptive payment is available, and that this phrase is not offering presumptive payment for the actual services.
- ''Medical assistance'' we interpret to mean FFP for administration of the approved State plan, as we believe that determination of eligibility for the State plan HCBS benefit and assessment of need for specific HCBS are administrative activities of the Medicaid or single State agency rather than a medical service to individuals. Even if the evaluation and assessment could be considered a medical service, none of the services permitted under section 1915(i) of the Act could be construed to include these activities. ''Medical assistance'' in this provision would not refer to other Medicaid State plan services because individuals being considered for eligibility for the State plan HCBS benefit must be Medicaid eligible and so already have access to those services. Therefore, we interpret section 1915(i)(1)(J) of the Act to offer the State an option for a period of presumptive payment, not to exceed 60 days, for Medicaid eligible individuals the State has reason to believe may be eligible for the State plan HCBS benefit. FFP would be available as administration of the approved State plan for evaluation of eligibility for the State plan HCBS benefit and assessment of need for specific HCBS. During the period of presumptive payment, the individual would not receive State plan HCBS, and would not be considered to be enrolled in the State plan HCBS benefit for purposes of computing the number of individuals being served under the benefit. We invite comments that offer other interpretations of this presumptive payment option and comport with existing Federal requirements.

13. Individual's Representative

When an individual is not capable of giving consent, or requires assistance in making decisions regarding his or her care, the individual may be assisted or represented by another person. Section 1915(i)(2) of the Act defines the term ''individual's representative'' by listing certain examples, but also provides that ''* * * any other individual who is authorized to represent the individual'' [m]ay be included. We believe that ''authorized'' refers to State rules concerning guardians, legal representatives, power of attorney, or persons of other status recognized under State law or under the policies of the State Medicaid program. States should ensure that such representatives conform to good practice concerning free choice of the individual, and assess for abuse or excessive control.

14. Nonapplication

Section 1915(i)(3) of the Act allows States to be exempted from the requirements of two sections of the Medicaid statute: section 1902(a)(1) of the Act, regarding statewideness; and section 1902(a)(10)(C)(i)(III) of the Act, regarding income and resource rules for the medically needy in the community. The statute uses the terms ''nonapplication'' and ''may chose not to comply with'' rather than ''waive''. We would use this terminology to maintain clarity between HCBS waiver programs under section 1915(c) of the Act, and State plan HCBS under section 1915(i) of the Act. However, these non-applications apply only with regard to the provision of State plan HCBS. The State is not exempted from these requirements as they apply to the provision of any other medical assistance under the plan, or with regard to the provision of institutional services.

Non-application of the requirement of statewideness allows States to furnish the State plan HCBS benefit in particular areas of the State, for

example, where the need is greatest, or where certain types of providers are available. States may choose to be exempted from the requirements of statewideness in order to begin services on a limited basis, perhaps with a view towards later expansion. If a State intends to offer the HCBS State plan benefit throughout the State, but anticipates that services would be phased in as providers and enrollees are identified, it is not necessary to elect non-application of statewideness requirements.

Being exempt from the requirements of section 1902(a)(10)(C)(i)(III) of the Act enables States to provide medical assistance to medically needy individuals in the community by electing to treat such individuals as if they are living in an institution for purposes of determining income and resources. This would result in the State not deeming income and resources from an ineligible spouse to an applicant or from a parent to a child with a disability.

Section 1915(i)(4) of the Act emphasizes that State election to provide the State plan HCBS benefit does not in any way affect the State's ability to offer programs through a section 1915(b) or (c) waiver, or under section 1115 of the Act.

However, we note that section 1915(c) HCBS waivers may be affected when a State implements a State plan HCBS benefit if institutional levels of care are modified to make them more stringent than needs-based eligibility criteria for the State plan HCBS benefit.

15. Federal Financial Participation for Institutional Level of Care Shall Continue for Individuals Receiving Services as of the HCBS State Plan Amendment's Effective Date

If the State modifies institutional level of care requirements so that they will be more stringent than the needs-based criteria for the State plan HCBS benefit, Section 1915(i)(5) of the Act provides protection for individuals who are receiving services in NFs, ICFs/MR, applicable hospitals or under section 1915(c) or section 1115 HCBS demonstration projects before the modification. These individuals need not satisfy the more stringent institutional eligibility criteria. FFP under the unmodified criteria continues until such time as the individual is discharged from the institution, waiver program, or demonstration, or no longer requires this level of care. States may avoid this requirement and the complications of implementing a dual institutional level of care process by preserving existing level of care requirements, and defining the State plan HCBS benefit needs-based criteria as less stringent than the existing institutional criteria.

*B. Effective Date*

The effective date on which States may provide HCBS through the State plan, as set forth by the DRA of 2005 is January 1, 2007.

*C. The State Plan HCBS Benefit in the Context of the Medicaid Program as a Whole*

The section 1915(i) State plan HCBS benefit is subject to provisions of the Medicaid program as a whole. Therefore, it is useful to note certain requirements of the Medicaid program that have an impact on the administration of the State plan HCBS benefit.

To be eligible for the State plan HCBS benefit, an individual must be included in an eligibility group that is contained in the State plan. Each individual must meet all financial and non-financial criteria set forth in the plan for the applicable eligibility group.

Section 1902(a)(8) of the Act requires States to furnish Medicaid services with reasonable promptness to individuals found eligible. However, under section 1915(i) of the Act, States may place limits on the number of persons that they would serve via the State plan HCBS benefit. If a State chooses to set a capacity limit for the State plan HCBS benefit as permitted in section 1915(i)(1)(C)(ii) of the Act, when the HCBS benefit reaches capacity, the requirements of reasonable promptness do not apply, since the option to choose these services is no longer available to additional individuals. When individuals apply for the State plan HCBS benefit after the State has reached capacity, the State would not be required to provide the State plan HCBS to the individuals, even when they meet otherwise applicable eligibility criteria.

Children included in eligibility groups under the State plan may meet the needs-based criteria and qualify for benefits under the State plan HCBS benefit. HCBS benefits that are not otherwise available under Medicaid's Early and Periodic Screening, Diagnosis and Treatment (EPSDT) benefit may be furnished to Medicaid eligible children who meet the State plan HCBS needs-based eligibility criteria, and who meet the State's medical necessity criteria for the receipt of services. State plan HCBS and EPSDT services may be provided concurrently. A mandate for EPSDT services applies only to services authorized by section 1905(a) of the Act. Therefore, HCBS under section 1915(i) of the Act are not included in the EPSDT program. Children who are eligible for the State plan HCBS benefit are eligible to receive medically necessary State plan HCBS, but the State is not required to provide HCBS as part of its EPSDT program. States may not reserve or protect ''slots'' for either adults or children, but must allow all individuals who meet eligibility and medical necessity criteria equal access to the State plan HCBS benefit.

Clinic services (whether or not furnished in a facility) for individuals with chronic mental illness are listed in section 1915(c)(4)(B) of the Act and therefore may be covered in the State plan HCBS benefit. If a State chooses to offer these services, they will be subject to the clinic upper payment limit (UPL) at 42 CFR 447.321. We also note that these services are defined differently than other clinic services offered under the State Plan in that they include services whether or not they are offered in a facility.

*D. Other Background*

1. Comparability and State Control of Costs

Section 1915(i) of the Act contains no provisions for waiving Medicaid amount, duration, and scope (''comparability'') requirements described under section 1902(a)(10)(B) of the Act. This provision has two important implications. First, States may not ''target'' the State plan HCBS benefit as is permitted with HCBS provided under section 1915(c) of the Act, which does provide the Secretary authority to waive comparability. Second, without targeting, States may not offer multiple versions of the State Plan HCBS benefit, each designed to serve different groups, as is permitted with HCBS waivers. States may design one State plan HCBS benefit, in which one or any combination of the permitted services is offered, and which includes needs-based eligibility and (optionally) service criteria. However, all individuals who meet the needs-based and other eligibility criteria for the State plan HCBS benefit must be served in the benefit (up to any limit the State optionally sets to the number of individuals the benefit will serve) regardless of how individuals may relate to target groups or other classifications.

States may assure appropriate utilization of the State plan HCBS benefit through application of the following provisions of 1915(i).

- The requirement to set eligibility standards built on needs-based criteria. States choose the needs-based criteria used to establish the thresholds of

program eligibility. States must set a lower threshold of need, but may also optionally define an upper threshold of need beyond which individuals may not be served on the benefit.

- Optionally, establishing needs-based criteria to determine eligibility for each State plan HCBS. These additional criteria may vary from service to service, and should assist States in identifying the individuals who could benefit from receipt of a particular State plan HCBS.
- The scope of services that the State chooses to offer may include any, but need not include all, of the services permitted under Section 1915(c)(4)(B). States can elect to offer a limited number of services under the State plan HCBS benefit.
- Limits on the amount or duration of each service.
- Since all State plan HCBS must be provided under a written plan of care, States have the opportunity to review an individual's plan of care to ensure that HCBS continue to be responsive to the needs of the individual, without being excessive.

General Medicaid requirements apply to the State plan HCBS benefit. All Medicaid services are to be provided only to those who need them according to medical necessity as defined by the State. Prior authorization or other utilization controls methods are available to the State.

2. HCBS Provided in the Community, Not in Institutions

Home and community-based services are not available in Medicaid-certified NFs, ICFs/MR, and hospitals, as these institutions are defined in statute and regulation. HCBS are available in private homes, apartments, or other non-institutional residential settings. While a simple definition of ''home and community-based'' would be any residence other than the three Medicaid certified institutions referenced above, this definition is insufficient to ensure that enrollees in this State plan benefit receive services in the type of setting intended. There are other public and private, large and small, residences whose character is equally institutional in the experience of residents. Therefore, we would propose that at the outset of this new Medicaid benefit, States should distinguish between institutional and community living arrangements for individuals being evaluated for enrollment in the State plan HCBS benefit.

Opportunities for independence and community integration in a variety of alternative living arrangements have been demonstrated for those receiving HCBS provided under section 1915(c) waivers and section 1115 demonstrations. The new Medicaid State plan HCBS benefit should be implemented based on those practices, and in the context discussed previously of the ADA and the *Olmstead* decision. We recognize that defining home and community is complex, and invite comments on this aspect of the proposed rule. We also believe that enough is known about methods to provide elderly and disabled individuals with housing that encourages independence and community participation to justify the need to establish standards around this important issue at the inception of a new benefit offering HCBS.

We interpret the distinction between ''institutional services'' and ''home or community-based services'' in terms of opportunities for independence and community integration as well as the size of a residence. Applicable factors include the resident's ability to control access to private personal quarters, and the option to furnish and decorate that area; if the personal quarters are not a private room, then unscheduled access to private areas for telephone and visitors, and the option to choose with whom they share their personal living space; unscheduled access to food and food preparation facilities; assistance coordinating and arranging for the resident's choice of community pursuits outside the residence; and the right to assume risk. Services provided in settings lacking these characteristics, with scheduled daily routines that reduce personal choice and initiative, or without personal living spaces, cannot be considered services provided in the home or community.

We would propose two mechanisms for the State to determine that residents are residing in the community rather than in an institution. First, we would require minimum standards, as prescribed by the Secretary, for community living facilities that take into account the factors discussed above.

Individuals vary widely in both support needs and preferences, so that a residence that meets the minimum standards for community living facilities may be homelike and community-integrated for one individual but may not be for another individual. While we do not find there to be any objective criteria, such as numbers of residents, to reliably distinguish facilities with institutional character from those with community character, we do believe that it is reasonable to use number of residents to trigger an assessment of the nature of the residence for a specific individual. We would therefore additionally propose that for individuals in larger residential settings there be an individualized determination that the residence is a community setting appropriate to the individual's need for independence, choice, and community integration. We believe that the person-centered assessment and plan of care required by section 1915(i) of the Act offers an efficient opportunity for such an individualized assessment of community residence. Therefore, we would propose to require that for individuals in residential settings meeting the standards for community living facilities, that house four or more persons unrelated to the proprietor and provide one or more services or treatments to the residents, the person-centered assessment and plan of care must include a determination that the residence is a community setting appropriate to the individual's need for independence, choice, and community integration.

We believe that these two mechanisms will provide States the flexibility to approve a variety of settings appropriate to the needs of the individuals served while also maximizing independence and opportunities for community integration.

For example, we anticipate that States could devise standards indicating that a residence with multiple independent living units (apartments) would not be considered to be housing four or more people together, and would therefore not trigger the requirement for the assessment to include documentation of community character.

The State plan HCBS benefit may be defined by States to serve individuals with widely varying degrees of independence. The person-centered assessment and plan of care will provide flexibility to approve different types of living arrangements according to need. For example, if physical or cognitive impairment makes unsupervised access to some food preparation facilities unsafe, and the person-centered plan reflects that there must be safeguards against this risk, then those portions of the kitchen would be made inaccessible when staff is not present. In this example, barring residents from the home's kitchen altogether would be an institutional, rather an integrated solution in all but the rarest of circumstances. A residence in which only the high risk equipment would be inaccessible when staff are not present, and the resident would have access to the kitchen, food, and equipment that does not pose a danger,

could be approved as a community living arrangement.

While HCBS are not available while an individual resides in an institution, HCBS should be available to individuals once they leave an institution. Recognizing that individuals leaving institutions require assistance to establish themselves in the community, we would allow for transition services to be claimed after the date of discharge from the institution. We propose that of the HCBS permitted under section 1915(i) of the Act, case management is the only service that could be commenced prior to discharge and could be used to assist individuals during the transition period of institutional residence.

3. HCBS Do Not Provide Room and Board

Payments for room and board are prohibited by section 1915(i)(1) of the Act. Except for respite care furnished in a facility approved by the State that is not a private residence, no service or combination of services may be used to furnish a full nutritional regimen (3 meals a day) through the State plan HCBS benefit. FFP for State plan HCBS is not available in the cost of meals that are furnished in alternative residential facilities in the community, regardless of whether services (other than respite care) are provided by or through the setting in which the individual resides.

When an individual must be absent from his or her residence in order to receive a service authorized by the individualized plan of care, it may be impractical to obtain a meal outside the venue in which the service is provided. This may occur during the receipt of facility-based respite care, adult day care, or site-based habilitation. In these instances, the individual may be unable to leave the site to obtain food at mealtime. Therefore, the State plan HCBS provider may elect to furnish the meal. When meals are furnished as an integral component of the service, the State may consider the cost of food in setting the rate it would pay for the State plan HCBS as the cost is then considered part of the service itself. We would not consider the meal to be an integral part of the State plan HCBS when two rates are charged to the public, one that includes a meal and one that does not include a meal.

## II. Provisions of the Proposed Rule

[If you choose to comment on issues in this section, please indicate the caption ''Provisions of the Proposed Rule'' at the beginning of your comments.]

To incorporate the policies and implement the statutory provisions described above, we are proposing the following revisions:

*Part 431 (State Organization and General Administration)*

- In § 431.40, we are proposing to amend paragraph (a)(7), by adding reference to section 1915(i) of the Act to the scope of subpart B, as an exception to statewide operation, and correcting the paragraph to include reference to sections 1915(d) and (e) of the Act.
- In § 431.50, we are proposing to amend paragraph (c) to include HCBS (under waivers and the State plan) as an exception to statewide operation.

*Part 440 (Services: General Provisions)*

- In § 440.1, we are proposing to add a reference to a new statutory basis to read ''1915(i) Home and community-based services furnished under a State plan to elderly and disabled individuals under the provisions of part 441, subpart K.''
- In § 440.180, we are proposing to revise the heading ''Home or community-based services'' to read ''Home and community-based waiver services'' to standardize the term ''home and community-based services'' and clarify that this section concerns only HCBS provided through 1915(c) waivers.
- In part 440 subpart A, we are proposing to add § 440.182, ''State plan home and community-based services'', which would define a new optional Medicaid service for which FFP is available to States, as specified in part 441, subpart K.

Section 440.182 (State Plan Home and Community-Based Services Benefit)

In § 440.182(a), we propose that the services authorized in section 1915(i) of the Act, and meeting the requirements outlined in proposed subpart K, be known as ''State plan home and community-based services.'' When referring to the specific service(s) offered under the State plan HCBS benefit listed in § 440.180(b), we use the term ''State plan HCBS.'' When referring to overall State activities under section 1915(i) of the Act as described in subpart K, we use the term ''benefit'', or ''State plan HCBS benefit''.

In § 440.182(b) and § 440.182(c)(1), we propose that the optional State plan HCBS benefit may consist of any or all of the HCBS listed in section 1915(c)(4) for waiver programs, as specified in regulation at § 440.180, except for the ''other'' services which the Secretary has the authority to approve for an HCBS waiver. Because section 1915(i) of the Act defines services by reference to section 1915(c) of the Act, we believe that the regulatory requirements should be parallel. Therefore, we list the permitted services for the State plan HCBS benefit in § 440.182 identically to the services specified in § 440.180 for HCBS waivers. We further specify that the conditions set forth in § 440.180(b) for services to individuals with chronic mental illness, and in § 440.180(c) for expanded habilitation services, apply to State plan HCBS services. In particular, due to concern over duplication of habilitation services, we propose to require at § 441.562(a)(2)(vix) an explanation of the manner in which nonduplication of services will be documented in the assessment of each individual receiving habilitation services. Section 1915(i) of the Act prohibits reimbursement for room and board. At § 440.182(c)(2) we define the term ''room'' to mean shelter type expenses, including all property-related costs such as rental or purchase of real estate and furnishings, maintenance, utilities, and related administrative services. The term ''board'' means three meals a day or any other full nutritional regimen. We propose in § 440.182(c)(2) to require an assurance that the State has a methodology to prevent claims and ensure that no payment is made for room and board in State plan HCBS. We propose to specify three types of service costs involving food and housing that are not considered room and board. We adopt the existing requirement for HCBS waivers in § 441.310(a)(2), to permit the cost of food and residence to be claimed for respite services furnished in State-approved settings that are not private residences. We clarify that a State may claim FFP for the costs of meals that are furnished as part of a program of adult day health or a similar activity conducted outside the participant's living arrangement on a partial day basis. Finally, we propose that a State may claim FFP for a portion of the housing expense and food that may be reasonably attributed as a service cost to compensate an unrelated caregiver providing State plan HCBS, who is residing in the same household with the recipient. We propose, as is the policy in HCBS waivers that FFP is available only for the reasonable additional costs of the caregiver residing in the recipient's home, not to support the cost of a caregiver's household in which the recipient resides. We would therefore provide that FFP not be available for caregiver living costs when the residence is owned or leased by the caregiver.

*Part 441 (Services: Requirements and Limits Applicable to Specific Services)*

In part 441, ''Requirements and Limits Applicable to Specific Services,'' we are proposing to add a new subpart K titled ''State Plan Home and Community-Based Services for Elderly and Disabled Individuals,'' consisting of § 441.550 through § 441.577, which describes requirements for providing the State plan HCBS benefit. This construction parallels that for HCBS waivers, which are the subject of subpart G of part 441.

In this new subpart, it is necessary in several paragraphs to indicate that certain provisions apply to an individual or an individual's representative. To reduce redundancy, we indicate in those paragraphs that ''individual'' means the eligible individual and, if applicable, the individual's representative, to the extent of the representative's authority recognized by the State. ''Individual and representative'' more accurately convey the person-centered process than ''individual or representative''. This provision clarifies that there is no implication that individuals will or will not have representatives.

Section 441.550 (Basis and Purpose)

We set forth in § 441.550 language to implement the provisions of section 1915(i) of the Act permitting States to offer HCBS to qualified elderly and disabled individuals under the State plan. Those services are listed in § 440.182, and are described by the State, including any limitations of the services. This optional benefit is known as the State plan HCBS benefit. This subpart describes what a State Medicaid plan must provide, and defines State responsibilities.

Section 441.553 (State Plan Requirements)

In § 441.553, we propose that a State plan that includes home and community-based services for elderly and disabled individuals must meet the requirements of this subpart. We would require that the State plan amendment in which the State establishes the State plan HCBS benefit satisfy the requirements set forth in this proposed regulation.

Section 441.556 (Eligibility for Home and Community-Based Services Under Section 1915(i)(1) of the Act)

We propose in § 441.556(a)(1) to require that the individual be eligible for Medicaid under an eligibility group covered under the State's Medicaid plan. Enrollment in the State plan HCBS does not confer Medicaid eligibility. In addition to meeting State Medicaid eligibility requirements, the statute requires that applicants for State plan HCBS must have income that does not exceed 150 percent of the Federal Poverty Level (FPL). (The poverty guidelines are updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).) We propose in § 441.556(a)(2) that determinations that the individual's income does not exceed 150 percent of FPL must be made using the applicable rules for income eligibility for the individual's eligibility group, including any more liberal income disregards used by the State for that group under section 1902(r)(2) of the Act. We see no authority in the statute for States to choose income limits other than 150 percent of FPL.

To implement the intent of the Congress that the benefit be ''home and community-based,'' we would require in § 441.556(a)(3) that the individual reside in the home or community, not in an institution, according to standards for community living facilities prescribed by the Secretary. As discussed in section I.D.2., there are a variety of living arrangements other than a private home or apartment that promote independence and community integration, as well as arrangements that do not. We propose that the person-centered assessment and plan of care required under the State plan HCBS benefit provides an opportunity to make individualized determinations of community residence. Therefore, we propose to require that if the individual resides in a setting with four or more persons unrelated to the proprietor, and which furnishes one or more services or treatments, the independent assessment must include documentation that the individual is living in a community setting, and not in an institution.

We would require in § 441.556(a)(4) that the individual must meet the needs-based eligibility criteria as set forth in § 441.559. We propose in § 441.556(a)(5) that individuals are not eligible for the State plan HCBS benefit until they have met all eligibility requirements, including the need for at least one service provided under the State plan as part of the HCBS benefit.

We propose in § 441.556(b) that States may elect to follow institutional income and resource eligibility rules for the medically needy living in the community. Waiving the requirements of section 1902(a)(10)(C)(i)(III) of the Act allows States to treat medically needy individuals as if they are living in an institution by not deeming income and resources from an ineligible family member. We use the term ''non-application'' instead of ''waive'' as does the statute. We further propose that States may elect non-application of section 1902(a)(1) of the Act, concerning statewide application of Medicaid, which permits the State plan HCBS benefit to be offered only in certain defined geographic areas of the State.

Section 441.559 (Needs-Based Criteria and Evaluation)

The statute uses a number of terms at times interchangeably. We adopt the wording used most frequently in the law, and specify a term for each requirement. For example, regarding the terms ''assessment'' and ''evaluation,'' we would adopt the language in section 1915(i)(1)(H)(ii) of the Act, which refers to the ''independent evaluation'' and the ''independent assessment.''

• Needs-based eligibility criteria.

In § 441.559(a), we propose that States establish needs-based criteria for determining an individual's eligibility under the State plan for HCBS, and may establish needs-based criteria for each specific service. We do not define support needs, as we believe that States should have the flexibility to match eligibility criteria to the nature of the services they would provide under the HCBS benefit. By statute, the needs-based criteria would consist of needs for specified types of support, such as assistance with ADLs, or risk factors defined by the State. We propose to require that State-defined risk factors affecting eligibility must be included as needs-based eligibility criteria in the State plan amendment. While we do not propose requirements for State-defined risk factors, we believe that as needs-based criteria, risk factors should be related to support needs, such as availability of family members or other unpaid caregivers and their willingness and ability to provide necessary care.

We distinguish support needs from other types of characteristics. We propose that a distinguishing characteristic of needs-based criteria is that they can only be ascertained for a given person through an individual evaluation. This differentiates a targeting criterion such as a diagnosis, which many individuals may identically share, from a support need, which will vary widely among those individuals with the same diagnosis. Also set forth in § 441.559(a) are the examples of needs-based eligibility criteria and factors to consider that are supplied in the statute. Section 1915(i) of the Act defines ADLs by reference to section 7702B(c)(2)(B) of the Internal Revenue Code of 1986. This section of the Internal Revenue Code lists eating, toileting, transferring, bathing, dressing,

and continence. This mobility-oriented definition of ADLs is one that States may consider, meaning that States are free to define criteria in other domains such as cognitive or behavioral needs for support.

We note that the regulation requires only that the needs-based criteria for the State plan HCBS benefit establish the lowest threshold of need to enroll in the benefit. There is an upper limit of need to be eligible for the HCBS benefit only if the State so specifies in the needs-based eligibility criteria. The more stringent institutional criteria required in § 441.559(b) of this section do not constitute an upper limit of need to be eligible for the State plan HCBS benefit. The institutional criteria are only a lowest threshold of need to receive institutional services. We also note that section 1915(i)(1) of the Act clarifies that State plan HCBS are not required to be direct alternatives to institutional care. The statute specifically provides that the State plan HCBS benefit does not need to meet the section 1915(c) requirement that, but for the services provided under the HCBS waiver, the individual would require institutional care.

• More stringent institutional and waiver needs-based criteria

In § 441.559(b), we propose that the State plan HCBS benefit is available to a State only if individuals may demonstrate a lower level of need to obtain State plan HCBS than is required to obtain institutional or waiver services. States that have functional level of care criteria for institutions (that meet the requirements in § 441.559(a)(1)), may have no need to modify their existing institutional criteria so long as the needs-based eligibility criteria established for State plan HCBS are less stringent. States without need-based institutional level of care criteria must add need-based requirements to their level of care assessments in order to establish the State plan HCBS benefit.

We propose in § 441.559(b) to define by reference to statute and regulation the institutions for which section 1915(i) of the Act requires more stringent eligibility criteria. Nursing facility and intermediate care facilities for the mentally retarded are so cited. We interpret reference in section 1915(i)(1)(B) of the Act to hospitals to mean facilities certified by Medicaid as hospitals that are providing long-term care services or services related to the HCBS to be provided under the benefit. The proposed regulation requires that States have or establish for such hospitals (if any), needs based criteria for admission that are more stringent than those for eligibility in the State plan HCBS benefit. We further propose, when the State covers more than one service in the State plan HCBS benefit, to require that any needs-based criteria for individual HCBS, combined with the needs-based eligibility criteria for the benefit, must be less stringent than needs-based eligibility criteria for any related institutional services. Without this provision, it would be possible for States to define needs-based eligibility criteria that are less stringent than those for institutions, but then set each needs-based service criteria at a more stringent level, effectively requiring all persons served by the benefit to be at a higher level of need than the statute intends.

In § 441.559(b), we further propose to require that the more stringent needs-based criteria for institutions and waivers be part of the State's level of care processes, to ensure that the criteria are uniformly utilized. We would require that these more-stringent needs-based criteria be submitted for comparison with the State plan amendment that establishes the State plan HCBS benefit. We note that needs-based criteria, as defined in § 441.559(a) require an evaluation to determine the individual's support needs. Therefore, the assessment process for institutional levels of care that include needs-based criteria must include an individual evaluation of support needs. We also propose to require that the State's more stringent institutional and waiver needs-based criteria be in effect on or before the effective date of the State plan HCBS benefit.

Finally, in § 441.559(b)(2), we propose that if States modify their institutional levels of care in order to satisfy the requirement that the levels of care be more stringent than the needs-based eligibility criteria for the State plan HCBS benefit, individuals receiving institutional and waiver services as of the date that more stringent eligibility criteria for those services become effective, would not be subject to the more stringent criteria. Exemption from the more stringent criteria is indefinite, but ends when the individual is discharged from the facility or waiver, or the individual no longer meets the criteria for the applicable level of care. We note that in long-term care facilities a transfer is not a discharge and would not cause the individual to lose this exemption. States would determine the effect of any subsequent changes to general level of care requirements (unrelated to the more stringent criteria) upon individuals with this exemption.

• Adjustment authority

In § 441.559(c), we propose to permit States under certain conditions to adjust, without prior approval from the Secretary, the needs-based eligibility criteria and service criteria (if any) established under § 441.559(a), in the event that the State experiences enrollment in excess of the number projected to be served by the HCBS benefit. We propose a retroactive effective date, as approved by the Secretary, for the State plan amendment modifying the needs-based criteria under § 441.559(c)(1). We set forth the following conditions required by the statute.

The State must provide for at least 60 days notice to the Secretary, the public, and we would add, each enrollee. Since the effect of adjusted criteria would be to reduce the scope of services, eligibility for services, or eligibility for the entire State plan HCBS benefit, the adjusted criteria would not apply to individuals already enrolled in the State plan HCBS benefit for at least 12 months from inception of such services, and we would add, for the additional length of the required minimum 60 day notification period. If the State also adjusts institutional levels of care, the adjusted institutional levels of care may not be less stringent than the institutional level of care prior to the effective date of the State plan HCBS benefit.

In § 441.559(c), we further propose to require explicitly that the adjusted needs-based eligibility criteria for the State plan HCBS benefit must be less stringent than all needs-based institutional level of care criteria in effect at the time of the adjustment.

We propose that the notice to the Secretary be submitted as a State plan amendment. In order to implement the adjustment authority without prior approval of the Secretary, the Secretary would approve a State plan amendment adjusting the needs-based HCBS benefit eligibility criteria with a retroactive effective date, as early as 60 days after the State notified each enrollee, the Secretary, and the public, (or whichever is later). Under the provision of section 1915(i)(1)(D)(ii) of the Act, the Secretary will evaluate the State's adjusted criteria for compliance with the provisions of this paragraph and subpart K. We also note that while the State may under this provision implement the adjusted criteria as early as 60 days after notification and before the State plan amendment is retroactively approved, the State is at risk for any actions it takes that are later disapproved.

Finally, we would require that the State notify affected individuals of their right to a fair hearing according to 42 CFR part 431, subpart E.

• Independent evaluation and determination of eligibility

In § 441.559(d), we propose that eligibility for the State plan HCBS benefit be determined by an independent evaluation of each individual, applying the general eligibility requirements in § 441.556 of this subpart, and the needs-based criteria that the State has established under § 441.559(a). Independence of the review requires meeting the conflict of interest standards set forth in § 441.568, where provider qualifications for evaluators are specified.

The evaluation must assess an individual's support needs and strengths. We interpret this provision of the statute to indicate that the evaluation process draws conclusions about supports that the individual requires because of age or disability, and supports that the individual does not require because of abilities to perform those functions independently. The evaluation compares those conclusions with the needs-based eligibility criteria for the State plan HCBS benefit to determine eligibility for the benefit. Section 1915(i)(1)(D)(i) of the Act provides that the State may take into account the need for significant assistance to perform ADLs, indicating that the statute does not require that eligibility be dependent upon lack of natural supports.

We note that appraisal of whether an individual has medical necessity for, and meets additional needs-based criteria (if any) for specific HCBS offered under the benefit, is part of the independent assessment and plan of care development process. However, this assessment affects eligibility for the benefit in that we propose at § 441.562 that individuals are considered enrolled in the State plan HCBS benefit only if they are assessed to require at least one home and community-based service offered under the State plan benefit in addition to meeting the eligibility and needs-based criteria for the benefit.

The evaluation process designed by the State would reflect the nature of the State plan HCBS benefit designed by the State. However, in order to meet the forgoing requirements, all independent evaluations require specific information about each individual's support needs, sufficient to draw the appropriate conclusions. In some cases this information may be well documented and current in the individual's existing records. In other cases, we would require that the evaluator obtain this information by whatever means are appropriate to secure a valid appraisal of the individual's current needs. This requirement could include professional assessment of certain functional abilities. State evaluation procedures that rely solely on review of medical records would not meet these requirements.

• Periodic redetermination

In § 441.559(e), we propose that individuals receiving the State plan HCBS benefit must be reevaluated at a frequency defined by the State, but not less than every 12 months, to determine whether the individuals continue to meet eligibility requirements. The independent reevaluations must meet the requirements for initial independent evaluations specified in § 441.559(d).

Section 441.562 (Independent Assessment)

In § 441.562, we propose requirements for independent assessment of need of each individual who has been determined by the independent evaluation to be eligible for the State plan HCBS benefit. The purpose of the assessment is to obtain, in combination with the findings of the independent eligibility evaluation, all the information necessary to establish a plan of care. The assessment is based on the needs of the individual, which we believe precludes assessment protocols that primarily determine diagnoses, or only assess function. Assessment protocols must not assign supports automatically by functional limitation. The independent assessment must determine the specific supports needed to address the individual's unique circumstances and needs.

The assessment also applies the State's needs-based criteria for each service (if any). We propose that an individual be considered enrolled in the State plan HCBS benefit only if the assessment finds that the individual needs and meets the needs-based criteria (if any) for, at least one State plan HCBS. This proposed requirement is to provide States with a mechanism to prevent the situation of an individual being eligible for the State plan HCBS benefit but not able to receive any of the services it offers. Such a circumstance would, among other problems, be of no utility to the individual, may make it difficult for the State to meet an assessed need, and would count towards the maximum number of individuals the State could serve, using up a ''slot'' for no purpose.

We make clear that the assessment must include an objective evaluation of the individual's inability to perform two or more activities of daily living (ADL) as defined in the Internal Revenue Code of 1986, or need for significant assistance to perform ADLs. We interpret the statutory term ''objective'' to require an accepted method of measuring functioning appropriate to the ADL.

We propose to require in § 441.562(a)(2) that the assessment include a face-to-face meeting with the individual (''individual'' meaning in this context, if applicable, the individual and the individual's authorized representative). In § 441.562(a)(2)(i), we propose to require that the assessment is performed by an agent that is independent and qualified as defined in § 441.568. The assessment is to be guided by best practice and research on effective strategies that result in improved health and quality of life outcomes. We further propose that the assessment includes consultation, as appropriate, with other responsible parties. The assessment must include an examination of the individual's relevant history, medical records, and care and support needs, including the findings from the independent eligibility evaluation.

If self-direction of services is offered by the State and elected by the individual, the independent assessment must include a self-direction appraisal as described in § 441.574.

We propose documentation requirements in the assessment to address two specific circumstances. For individuals living in a residence with four or more persons unrelated to the proprietor, that furnishes one or more treatments or services and meets the criteria listed in paragraph (a)(3) of § 441.556, we propose that the assessment must include documentation that the individual is living in a community setting, and not in an institution.

For individuals receiving habilitation services, we propose to require documentation that no services are provided under Medicaid that would otherwise be available to the individual, specifically including but not limited to services available to the individual through a program funded under section 110 of the Rehabilitation Act of 1973, or the Individuals with Disabilities Improvement Act of 2004. We believe that these documentation requirements would provide a clear method for States to comply with Federal requirements, focus only on the individuals for whom these circumstances could apply, and would not add significantly to the burden of the assessment.

Finally, in § 441.562(b), we propose to require that the independent assessment of need is conducted at least every 12 months and as needed when the individual's needs and circumstances change significantly, in order to revise the plan of care.

Section 441.565 (Plan of Care)

In § 441.565 we propose to require that based on the independent assessment specified in § 441.562, the State develops (or approves, if the plan is developed by others) a plan of care through a person-centered planning process. Section 1915(i)(1)(G)(iii)(III)(dd) of the Act requires a person-centered approach to establishing a plan of care for an individual (''individual'' meaning in this context, if applicable, the individual and the individual's authorized representative) electing to direct his or her own services. We propose to require that person-centered principles guide all plans of care for the State plan HCBS benefit.

We propose that the plan of care must be developed jointly with the individual. While we propose several specific requirements for the process of developing a plan of care, we note that the intent of these requirements is to ensure a process with shared authority between the individual and the agency or agent. To achieve this intent, States must affirmatively and creatively work to establish such shared authority.

The assessment must include consultation with appropriate persons. Definition of appropriate persons would be determined in each case, and while we include examples, we do not propose any required or excluded category of persons to consult. When the plan of care is finalized between the parties, a written copy is provided to the individual.

Also, in § 441.565(a), we propose certain content to be required in the plan of care. The plan of care must identify the specific State plan HCBS to be provided to the individual, that take into account the individual's strengths, preferences, and desired outcomes, as well as support needs arising from the individual's disability. In the planning process, the degree of assistance with ADLS available to the individual outside of the State plan HCBS benefit may be taken into account in planning the scope and frequency of HCBS to be provided. Thus, the plan of care provides for all needed services to the individual while preventing provision of unnecessary services.

We propose a single plan of care for both self-directed and non self-directed services. When an individual self-directs some or all of their HCBS, the plan of care includes the information required in § 441.574.

We further propose to require that the plan of care be reviewed and revised at least every 12 months, and as needed when the individual's circumstances or needs change significantly.

Section 441.568 (Provider Qualifications)

In § 441.568, we propose to require that the State provide assurance that necessary safeguards have been taken to protect the health and welfare of the enrollees in State plan HCBS by provision of adequate standards for all types of providers of HCBS. States must define qualifications for providers of HCBS services, and for those persons who conduct independent evaluation of eligibility for State plan HCBS, independent assessment of need, and are involved with developing the plan of care.

We propose at § 441.568(b) and (c) to require minimum qualifications for individuals and agencies who conduct independent evaluation of eligibility for State plan HCBS, independent assessment of need, and are involved with developing the plan of care. We will refer to these individuals and entities involved with determining access to care as ''agents'' to distinguish this role from providers of services. We believe that these qualifications are important safeguards for individuals enrolled in the State plan HCBS benefit and propose that they be required whether activities of the agents are provided as an administrative activity or whether some of the activities are provided as a Medicaid service. At a minimum, these qualifications include conflict of interest standards, and for providers of assessment and plan of care development, these qualifications must include training in assessment of individuals whose physical or mental condition may trigger a need for home and community-based services and supports, and an ongoing knowledge of current best practices to improve health and quality of life outcomes.

The minimum conflict of interest standards we propose to require ensure that the provider is not a relative of the individual or responsible for the individual's finances or health-related decisions. Relatives and decision makers are required to be permitted in the assessment and planning process, as appropriate, but we do not see any necessity or value in family members being responsible for evaluation, assessment, or planning. Our experience with HCBS in waivers indicates that assessment and plan of care development should not be performed by providers of the services prescribed. However, we recognize, as discussed in Section I., that in some circumstances there are acceptable reasons for a single provider of service that performs all of those functions. In this case, the Secretary would require the State Plan to include provisions assuring separation of functions within the provider entity.

Section 441.571 (Definition of Individual's Representative)

In § 441.571, we propose to define the term ''individual's representative'' to encompass any party that is authorized to represent the individual for the purpose of making personal or health care decisions, either under State law or under the policies of the State Medicaid agency. We do not propose to regulate the relationship between an individual enrolled in the State plan HCBS benefit and his or her authorized representative, but note that States should have policies to assess for abuse or excessive control and ensure that representatives conform to applicable State requirements.

Section 441.574 (Self-Directed Services)

We propose in § 441.574 to permit States to offer an election for self-directing HCBS. In § 441.574(a), we would define ''self-direction.'' Provisions related to self-direction apply to an individual or an individual's representative. In § 441.574(b), we propose that when an individual chooses self-direction, the independent assessment and person-centered planning required under §§ 441.562 and 441.565 would include examination of the support needs of the individual to self-direct the purchase of, or control the receipt of, such services. The evaluation should not reject election to self-direct based solely on the individual's disability or a manifestation of his or her disability. We therefore propose to require that the evaluation for self-direction result in a determination of ability to self-direct both with and without specified supports.

We propose regulations containing the specific requirements for self-direction found in section 1915(i)(1)(G)(iii) of the Act. These regulations are consistent with our policy for self-direction under section 1915(c) HCBS waivers. We propose to require in § 441.574(b) that the plan of care indicate the HCBS to be self-directed and the methods by which the individual will plan, direct, or control the services; the role of family or others who will participate in the HCBS; and risk management techniques. Our experience with HCBS waivers indicates that contingency plans are an important protection for the individual, in the absence of an agency that would otherwise be responsible for absent workers or other common problems.

Contingency plans are most effective when designed for the unique circumstances of each self-directing individual. We propose that the plan of care describe the process for facilitating voluntary and involuntary transition from self-direction. When the plan of care is finalized between the parties, a written copy is provided to the individual, as required in § 441.565(a).

In § 441.574(c) and (d), we define self-direction of services in terms of employer authority and budget authority, as we have with self-directed HCBS in Medicaid section 1915(c) waivers. In § 441.574(c), employer authority is defined as the ability to select, manage, or dismiss providers of the State plan HCBS. We propose that the plan of care must specify the authority to be assumed by the individual and the individual's representative, any parties responsible for functions outside the assumed authority, and the financial management supports to be provided as required in § 441.574(e).

In § 441.574(d), we propose to define budget authority as an individualized budget which identifies the dollar value of the services and supports under the control and direction of the individual. We propose that the plan of care must specify the method for calculating the dollar values in the budget, a process for adjusting the budget to reflect changes in assessment and plan of care, a procedure to evaluate expenditures under the budget, and the financial management supports, as required in § 441.574(e), to be provided. We clarify here that while budget authority grants control of expenditures to the individual, it does not include performing the transactions or conveying cash to the individual or representative.

In § 441.574(e), we propose to define functions in support of self-direction that the State must offer, based on our experience with self-directed HCBS in section 1915(c) waivers and section 1115 demonstrations. These provisions are required in order to equip individuals for success in managing their services, and to comply with Federal, State, and local requirements, particularly the many tax, labor, and insurance issues that arise when the self-directing individual is the employer of record. Supports for self-direction should provide the technical expertise and business functions that will free individuals to exercise choice and control over their experience of the HCBS provided to them.

Section 441.577 (State Plan HCBS Administration: State Responsibilities and Quality Improvement)

- State responsibilities.

We would require in § 441.577(a)(1)(i) that the State annually provide CMS with the projected number of individuals to be enrolled in the benefit, and the actual number of unduplicated individuals enrolled in the State plan HCBS benefit in the previous year. States may choose to limit the number to be served at any point in time, as provided in § 441.577(a)(1)(ii). If the State so chooses, we propose that it would also provide annually to CMS the maximum number enrolled at one time.

In § 441.577(a)(1)(ii) we propose that a State may elect to set a limit on the number of individuals enrolled in the State plan HCBS benefit, either as an annual limit or as limit at any one point in time. The State must establish or adjust the limit by amending the State plan. The State may, but is not required to, establish a waiting list. States must consider many legal requirements and competing demands in establishing waiting list policy, including the Americans with Disabilities Act (ADA). We do not specify waiting list requirements, but propose to require that if a State elects to maintain a waiting list, it must do so with written and publicly published policies to ensure fairness and consistency. The public should have opportunity for notice and comment on this important limitation to access. We propose to require a formally established schedule and procedure for reevaluation and revision to waiting list policy. We also would require assurance that States will adhere to all applicable Federal and State requirements. For example, individuals who may be denied access to services would have all rights required under 42 CFR part 431, subpart E.

Because section 1915(i) of the Act does not authorize waiver of comparability requirements, we clarify in § 441.577(a)(1)(iii) that the State may not limit enrollee access to services in the benefit for any reason other than assessed need, including limits based on type of disability or other targeting, or limiting the number of persons receiving particular services. This is an important distinction between the limits States place on the services to be offered when they design the benefit, as opposed to limiting access to the services that are in the benefit for particular enrolled individuals. As discussed in Section I.D.1 above, States have a number of permitted methods to control utilization by placing limits on the overall benefit and particular services offered. We propose that once an individual is found eligible and enrolled in the benefit, access to offered services can only be limited by medical necessity. Medical necessity in the State plan HCBS benefit is determined by the independent assessment and person-centered plan of care. By not limiting access, we mean that an enrollee must receive any or all of the HCBS offered by the benefit, in scope and frequency up to any limits on those services defined in the State plan, to the degree the enrollee is determined to need them. Enrollees should receive no more, and no fewer, services than they are determined to require. We note that one function of the plan of care as proposed at § 441.565(a)(3) is to prevent the provision of unnecessary or inappropriate care.

- Administration.

We propose in § 441.577(a)(2)(i) an option for presumptive payment. The State may provide for a period of presumptive payment, not to exceed 60 days, for evaluation of eligibility for the State plan HCBS benefit and assessment of need for HCBS. This period of presumptive payment would be available for individuals who have been determined to be Medicaid eligible, and whom the State has reason to believe may be eligible for the State plan HCBS benefit. We propose that FFP would be available for evaluation and assessment as administration of the approved State plan prior to an individual's determination of eligibility for and receipt of other 1915(i) services. If the individual is found not eligible for the State plan HCBS benefit, the State may claim the evaluation and assessment as administration, even though the individual would not be considered to have participated in the benefit for purposes of determining the annual number of individuals served by the benefit. FFP would not be available during this presumptive period for receipt of State plan HCBS.

In § 441.577(a)(2)(ii), we propose that a State plan amendment submitted to establish the State plan HCBS benefit must include a reimbursement methodology for each covered service. In some States, reimbursement methods for self-directed services may differ from the same service provided without self-direction. In such cases, the reimbursement methodology for the self-directed services must also be described.

In § 441.577(a)(2)(iii), we propose that the State Medicaid agency describe the line of authority for operating the State plan HCBS benefit. The State plan HCBS benefit requires several functions

to be performed in addition to the service(s) provided, such as eligibility evaluation, assessment, and developing a plan of care. To the extent that the State Medicaid agency delegates these functions to other entities, we propose that the agency describe the methods by which it will retain oversight and responsibility for those activities, and for the operation and quality improvement of the benefit as a whole.

• Quality improvement strategy.

We propose in § 441.577(b) the guidelines for quality assurance required in the statute at section 1915(i)(1)(H)(i) of the Act. We propose to require a State to maintain a quality improvement strategy for its State plan HCBS benefit. The State's quality improvement strategy should reflect the nature and scope of the benefit the State will provide.

As discussed in section I of this preamble, section 6086(a) of the DRA established section 1915(i) of the Act, the optional State plan HCBS benefit. Section 6086(b), Quality of Care Measures, sets forth requirements for the Secretary to develop through the Agency for Healthcare Research and Quality (AHRQ) indicators and measures for program performance and quality of care to assess HCBS at the State and national level, and service outcomes, particularly regarding health and welfare of recipients. Likewise, we propose that measures in the State quality improvement strategy consist of indicators for program performance and quality of care as approved and prescribed by the Secretary, and applicable to the nature of the benefit.

In § 441.577(b)(2), we propose to require States to have program performance measures, appropriate to the scope of the benefit, designed to assess the State's overall system for providing HCBS.

In § 441.577(b)(3), we propose to require States to have quality of care measures as approved or prescribed by the Secretary that may be used to assess individual outcomes of participants in home and community-based services, such as client function indicators and measures of client satisfaction. Outcome measures may be reflective of the design and scope of the benefit and the specific HCBS provided.

## III. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the ''DATES'' section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

## IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

• The need for the information collection and its usefulness in carrying out the proper functions of our agency.

• The accuracy of our estimate of the information collection burden.

• The quality, utility, and clarity of the information to be collected.

• Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

*Section 441.559 Needs-Based Criteria and Evaluation*

Section 441.559(a) requires a State to establish needs-based criteria for determining an individual's eligibility under the State plan for the HCBS benefit, and may establish needs-based criteria for each specific service.

The burden associated with this requirement is the time and effort put forth by the State to establish such criteria. We estimate it would take 1 State 24 hours to meet this requirement. We estimate that on an annual basis, 3 States will submit a State plan amendment to offer the State plan HCBS benefit, and be affected by this requirement; therefore, the total annual burden hours for this requirement is 72 hours. This would be a one-time burden.

Section 441.559(c) reads that a State may modify the needs-based criteria established under paragraph (a) of this section, without prior approval from the Secretary, if the number of individuals enrolled in the State plan HCBS benefit exceeds the projected number submitted annually to CMS.

Section 441.559(c)(1) requires the State to provide at least 60 days' notice of the proposed modification to the Secretary, the public, and each individual enrolled in the State plan HCBS benefit. The State notice to the Secretary will be considered an amendment to the State plan.

Section 441.559(c)(2) reads that the State may under this provision implement the adjusted criteria as early as 60 days after submitting the State plan amendment and notifying all required parties.

The burden associated with the requirements found under 441.559(c) is the time and effort put forth by the State to modify the needs-based criteria and provide notification of the proposed modification to the Secretary. We estimate it would take 1 State 24 hours to make the modifications and provide notification. This would be a one-time burden. The total annual burden of these requirements would vary according to the number of States who choose to modify their needs-based criteria. We do not expect any States to make this modification in the next 3 years.

Section 441.559(d) states that eligibility for the State plan HCBS benefit is determined, for individuals who meet the requirements of 441.556(a)(1) through (3), through an independent evaluation of each individual that meets the specified requirements. Section 441.559(d)(5) requires the evaluator to obtain information from existing records, and when documentation is not current and accurate, obtain any additional information necessary to draw a valid conclusion about the individual's support needs. Section 441.559(e) requires at least annual reevaluations.

The burden associated with this requirement is the time and effort put forth by the evaluator to obtain information to support their conclusion. We estimate it would take one evaluator 2 hours per participant to obtain information as necessary. The total annual burden of this requirement would vary according to the number of participants in each State who may require and be eligible for home and community-based services under the State plan.

Section 441.562 requires the State to provide for an independent assessment of need in order to establish a plan of care. At a minimum, the plan must meet the requirements as discussed under 441.565.

Section 441.568 requires the State to define in writing adequate standards for providers of HCBS services and for providers conducting independent evaluation, independent assessment, and plan of care development.

While the burden associated with the requirements under §§ 441.562 and 441.568 is subject to the PRA, we

believe the burden is exempt as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with this requirement would be incurred by persons in the normal course of their activities.

*Section 441.574 Self-Directed Services*

Section 441.574 reads that a State may choose to offer an election for self-directing HCBS.

The burden associated with this requirement is the time and effort put forth by the State to elect for self-directing HCBS. We estimate it would take one State 5 hours to meet this requirement; therefore, if all of the States and territories estimated to apply for State plan HCBS on an annual basis (3) chose to offer an election for self-directing HCBS the total annual burden would be 15 hours. This would be a one-time burden.

*Section 441.577 State Plan HCBS Administration: State Responsibilities and Quality Improvement*

Section 441.577(a)(1)(i) reads that a State will annually provide CMS with the projected number of individuals to be enrolled in the benefit, and the actual number of unduplicated individuals enrolled in State plan HCBS in the previous year. If the State chooses to limit the number to be served at any point in time, as provided in § 441.577(a)(1)(ii), the State will annually provide to CMS the maximum number enrolled at one time.

The burden associated with this requirement is the time and effort put forth by the State to annually project the number of individuals who will enroll in State plan HCBS. We estimate it will take one State 2 hours to meet this requirement. The total annual burden of these requirements would vary according to the number of States offering the State plan HCBS benefit. The maximum total annual burden is 112 hours (56 States × 2 hours = 112 hours).

Section 441.577(a)(1)(ii)(B) reads that if a State elects to maintain a waiting list for State plan HCBS, the State establishes and adheres to policies and procedures for formation and maintenance of a waiting list that complies with all applicable Federal and State requirements.

While this burden associated with this requirement is subject to the PRA, we believe the burden is exempt as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with this requirement would be incurred by persons in the normal course of their activities.

Section 441.577(a)(2)(ii) reads that the State plan amendment to provide State plan HCBS must contain a description of the reimbursement methodology for each covered service.

The burden associated with this requirement is the time and effort put forth by the State to describe the reimbursement methodology for each State plan HCBS. We estimate that it will take one State an average of 2 hours to determine the reimbursement methodology for one covered HCBS. This would be a one-time burden. The total annual burden for this requirement would vary according to the number of services that the State chooses to include in the State plan HCBS benefit.

Section 441.577(a)(2)(iii) reads that the State plan amendment to provide State plan HCBS must contain a description of the State Medicaid agency line of authority for operating the State plan HCBS benefit, including distribution of functions to other entities.

The burden associated with this requirement is the time and effort put forth by the State to describe the State Medicaid agency line of authority. We estimate it will take one State 2 hours to meet this requirement. Since we have estimated that 3 States will annually request State plan HCBS, the total annual burden associated with this requirement is estimated to be 6 hours. This would be a one-time burden.

Section 441.577(b)(1) requires States to maintain a quality improvement strategy that includes methods for ongoing measurement of program performance and mechanisms of intervention to assure quality of care, proportionate to the scope of services in the State plan HCBS benefit, the needs-based criteria, and the number of individuals to be served.

The burden associated with this requirement is the time and effort put forth by the State to prepare and maintain a quality improvement strategy. We estimate it will take one State 45 hours for the preparation and maintenance of the strategy. The total annual burden of these requirements would vary according to the number of States offering the State plan HCBS benefit. The maximum total annual burden is estimated to be 2,520 hours (56 States × 45 hours = 2,520 hours).

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements described above. These requirements are not effective until they have been approved by OMB.

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Mail copies to the address specified in the **ADDRESSES** section of this proposed rule and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Carolyn Lovett, CMS Desk Officer, CMS–2249–P, *carolyn_lovett@omb.eop.gov*. Fax (202) 395–6974.

## V. Regulatory Impact Analysis

[If you choose to comment on issues in this section, please indicate the caption ''Regulatory Impact'' at the beginning of your comments.]

*A. Overall Impact*

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism, and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866, as amended, directs agencies to identify the specific market failure or other problem that warrants agency action, assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We estimate that, adjusted for a phase-in period during which States gradually elect to offer the State plan HCBS benefit, in fiscal year 2009 the estimated cost would be $114 million. The estimated 5-year (FY 2007 through FY 2011) cost of this proposed rule would be $563 million. Therefore, we estimate that this rulemaking is ''economically significant'' as measured by the $100 million standard, and hence also a major rule under the Congressional Review Act. Accordingly, we have prepared a Regulatory Impact Analysis.

The RFA requires agencies to analyze options for regulatory relief of small businesses if a rule would have a

significant impact on a substantial number of small businesses or small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6.5 million to $31.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. This rule imposes no requirements or costs on providers or suppliers for their existing activities. The rule implements a new optional State plan benefit established in section 1915(i) of the Act. Small entities that meet provider qualifications and choose to provide HCBS under the State plan would have a business opportunity under this proposed rule. The Secretary certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Core-Based Statistical Area and has fewer than 100 beds. We have determined that this proposed rule would not have a significant effect on the operations of a substantial number of small rural hospitals because there would be no change in the administration of the provisions related to small rural hospitals. Therefore, the Secretary has determined that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $127 million. This proposed rule does not mandate any spending by State, local, or tribal governments or the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

*B. Anticipated Effects*

1. Effects on Medicaid Beneficiaries

The Medicaid beneficiaries who receive the State plan HCBS benefit will be substantial and beneficial. The State plan HCBS benefit will afford business opportunity for providers of the HCBS.

2. Effects on Other Providers

We do not anticipate any effects on other providers. Section 1915(i) of the Act delinks the HCBS from institutional level of care, and requires that eligibility criteria for the benefit include a threshold of need less than that for institutional level of care, so that it is unlikely that large numbers of participants in the State plan HCBS benefit will be discharged from the facilities of Medicaid institutional providers. There may be some redistribution of services among providers of existing non-institutional Medicaid services into State plan HCBS, but providers who meet qualifications for the State plan HCBS benefit have the option to enroll as providers of HCBS.

3. Effects on the Medicare and Medicaid Programs

This rule has no effect on the Medicare program. State Medicaid programs will make use of the optional flexibility afforded by the State plan HCBS benefit to provide needed long-term care home and community based services to eligible elderly or disabled individuals the State has not had means to serve previously, or to provide services to these individuals more efficiently and effectively. The State plan HCBS benefit will afford States a new means to comply with requirements of the Olmstead decision, to serve individuals in the least restrictive setting.

The cost of these services will be dependent upon the number of States electing to offer the benefit, the scope of the benefits States design, and the degree to which the benefits replace existing Medicaid services. States have more control over expenditures for this benefit than over other State plan services. For States that choose to offer these services, States may specify limits to the scope of HCBS, cap the number of recipients, and have the option to tighten eligibility requirements if costs escalate too rapidly.

Use of the State plan HCBS benefit is unlikely to result in increased access to other Medicaid services, because eligibility for the benefit is limited to individuals who are already eligible for Medicaid, and whose income is less than 150 percent of the FPL. Moreover, costs of the State plan HCBS benefit may be offset by lowered potential Federal and State costs of more expensive institutional care. Additionally, the requirement for a written individualized plan of care may discourage inappropriate utilization of costly services such as emergency room care for routine procedures.

After taking the above factors into account, the Federal and State cost estimates are shown in the table below.

MEDICAID COST ESTIMATE

[In millions]

| | FY08 | FY09 | FY10 | FY11 | FY12 | 5-year total |
|---|---|---|---|---|---|---|
| Federal Cost | $68 | $114 | $169 | $189 | $210 | $750 |
| State Cost | 51 | 86 | 127 | 142 | 159 | 565 |

*C. Alternatives Considered*

This proposed rule incorporates provisions of new section 1915(i) of the Act into Federal regulations, providing for Medicaid coverage of a new optional State plan benefit to furnish home and community-based State plan services. The statute provides States with an option under which to draw Federal matching funds; it does not impose any requirements or costs on existing State programs, on providers, or upon beneficiaries. States retain their existing authority to offer HCBS through the existing authority granted under section 1915(c) waivers and under section 1115 waivers. States can also continue to

offer, and individuals can choose to receive, some but not all components of HCBS allowable under section 1915(i) through existing State plan services such as personal care or targeted case management services. Therefore, this rule is entirely optional for States.

Alternatives to this rule as proposed include:

1. Not Publishing a Rule

Section 1915(i) of the Act is effective January 1, 2007. States may propose State plan amendments to establish the State plan HCBS benefit with or without this proposed rule. We considered whether this statute could be self-implementing and require no regulation. Section 1915(i) of the Act is complex; many States have contacted us for technical assistance in the absence of published guidance, and some have indicated they are waiting to submit an amendment until there is a rule. We further considered whether a State Medicaid Director letter would provide sufficient guidance regarding CMS review criteria for approval of a State plan amendment. We conclude that section 1915(i) of the Act establishes significant new features in the Medicaid program, and that States and the public should be afforded the published invitation for comment provided by this proposed rule. Finally, State legislation and judicial decisions are not alternatives to a Federal rule in this case since section 1915(i) of the Act provides Federal benefits.

2. Modification of Existing Rules

We considered modifying existing regulations at 42 CFR 440.180, part 441 subpart G, Home And Community-Based Services: Waiver Requirements, which implement the section 1915(c) HCBS waivers, to include the authority to offer the State plan HCBS benefit. This would have the advantage of not duplicating definitions of HCBS and certain requirements common to both types of HCBS. However, we believe that any such efficiency would be outweighed by the substantial discussion that would be required of the differences between the Secretary's discretion to approve waivers under section 1915(c) of the Act, and authority to offer HCBS under the State plan at section 1915(i) of the Act. While Congress clearly considered the experience to date with HCBS under waivers when constructing section 1915(i) of the Act, it did not choose to modify section 1915(c) of the Act, but chose instead to create a new authority at section 1915(i) of the Act. We, therefore, chose to propose a separate rule.

3. Alternative Methods for Delivering HCBS

CMS considered using existing operational methods for delivering State plan HCBS, but the unique and specific requirements in section 1915(i) of the Act are substantially different from currently-existing authorities, and ultimately required stand-alone implementation tailored to the particular characteristics of the State plan HCBS option as described in statute. CMS considered whether section 1915(i) of the Act permits States to: (1) Disregard comparability, (2) define HCBS other than the services specifically listed in statute, as allowable under section 1915(c), (3) offer HCBS to Medicaid beneficiaries without a 150 percent of FPL income test unique to this benefit, or (4) provide State plan HCBS in place of mandatory institutional benefits for some individuals. However, CMS determined that none of these options is allowable under section 1915(i) of the Act.

*D. Accounting Statement and Table*

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in the table below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule. This table provides our best estimate of the proposed increase in Federal Medicaid outlays resulting from offering States the option to provide the State plan HCBS benefit established in section 1915(i) of the Act and implemented by CMS–2249–P (Medicaid program; Home and Community-Based State Plan Services).

TABLE: ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM FY 2008 TO FY 2012

[In millions]

| Category | Transfers | |
|---|---|---|
| Annualized Monetized Transfers | 3% Units Discount Rate $147.9 | 7% Units Discount Rate $145.1 |
| From Whom To Whom? | Federal Government to Providers | |
| Other Annualized Monetized Transfers | 3% Units Discount Rate $111.4 | 7% Units Discount Rate $109.3 |
| From Whom To Whom? | State Governments to Providers | |

*E. Conclusion*

We anticipate that States will make widely varying use of the section 1915(i) State plan HCBS benefit to provide needed long-term care services for Medicaid beneficiaries. These services will be provided in the home or alternative living arrangements in the community, which is of benefit to the beneficiary and is less costly than institutional care. Requirements for independent evaluation and assessment, individualized care planning, and requirements for a quality improvement program will assure efficient and effective use of Medicaid expenditures for these services.

For the reasons stated above, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and the Secretary certifies, that this proposed rule will not have a significant

economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

**List of Subjects**

*42 CFR Part 431*

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

*42 CFR Part 440*

Grant programs—health, Medicaid.

*42 CFR Part 441*

Family planning, Grant programs—health, Infants and children, Medicaid, Penalties, Prescription drugs, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

## PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. The authority citation for part 431 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

### Subpart B—General Administrative Requirements

2. Section 431.40 is amended by revising paragraph (a)(7) to read as follows:

**§ 431.40 Basis and scope.**

(a) * * *

(7) Exceptions to, and waiver of, State plan requirements—sections 1915(a) through (e), and (i) of the Act, and section 1916(a)(3) and (b)(3) of the Act.

* * * * *

3. Section 431.50 is amended by—

A. Redesignating paragraph (c)(2) as paragraph (c)(3).

B. Adding a new paragraph (c)(2).

The revisions read as follows:

**§ 431.50 Statewide operation.**

* * * * *

(c) * * *

(2) Home and community-based services for the elderly and disabled under sections 1915(c), (d), and (i) of the Act; and

* * * * *

## PART 440—SERVICES: GENERAL PROVISIONS

4. The authority citation for part 440 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

5. Amend § 440.1 by adding the new statutory basis in numerical order.

The addition reads as follows:

**§ 440.1 Basis and purpose.**

* * * * *

1915(i) Home and community-based services furnished under a State plan to elderly and disabled individuals under the provisions of part 441, subpart K.

6. Section 440.180 is amended by revising the heading to read as follows:

**§ 440.180 Home and community-based waiver services.**

* * * * *

7. A new § 440.182 is added to read as follows:

**§ 440.182 State plan home and community-based services.**

(a) *Definition. State plan home and community-based services benefit* means the services listed in paragraph (b) of this section when provided under an amendment to the State's Medicaid plan under the provisions of part 441, subpart K of this chapter.

(b) *Services.* The State plan home and community-based services (HCBS) benefit provided by the State may consist of any or all of the following services as they are described by the State and included in the State's plan for medical assistance approved by the Secretary:

(1) Case management services.

(2) Homemaker services.

(3) Home health aide services.

(4) Personal care services.

(5) Adult day health services.

(6) Habilitation services, which include expanded habilitation services as specified in § 440.180(c).

(7) Respite care services.

(8) Subject to the conditions in § 440.180, for individuals with chronic mental illness:

(i) Day treatment or other partial hospitalization services;

(ii) Psychosocial rehabilitation services;

(iii) Clinic services (whether or not furnished in a facility.

(c) *Exclusions.* State plan HCBS do not include either of the following:

(1) Other services. The other services that the Secretary has the authority to approve under § 440.180 for a home and community-based services (HCBS) waiver;

(2) *Room and board.* For purposes of this provision, ''board'' means 3 meals a day or any other full nutritional regimen. ''Room'' means expenses for shelter, including all property-related costs, furnishings, maintenance, utilities, and related administrative services. FFP is not available for the cost of room and board in State plan HCBS. The following service costs are not considered room or board:

(i) The cost of food and housing in respite care services provided in a facility approved by the State that is not a private residence.

(ii) Meals provided as part of a program of adult day health services as long as the meals provided do not constitute a ''full'' nutritional regimen.

(iii) A portion of the housing expense and food that may be reasonably attributed to an unrelated caregiver providing State plan HCBS who is residing in the same household with the recipient, but not if the recipient is living in the home of the caregiver or in a residence that is owned or leased by the caregiver.

## PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

8. The authority citation for part 441 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

9. A new subpart K, consisting of § 441.550 through § 441.577, is added to part 441 to read as follows:

**Subpart—K State Plan Home and Community-Based Services for Elderly and Disabled Individuals**

Sec.

441.550 Basis and purpose.
441.553 State plan requirements.
441.556 Eligibility for home and community-based services under section 1915(i)(1) of the Act.
441.559 Needs-based criteria and evaluation.
441.562 Independent assessment.
441.565 Plan of care.
441.568 Provider qualifications.
441.571 Definition of individual's representative.
441.574 Self-directed services.
441.577 State plan HCBS administration: State responsibilities and quality improvement.

### Subpart K—State Plan Home and Community-Based Services for Elderly and Disabled Individuals

**§ 441.550 Basis and purpose.**

Section 1915(i) of the Act permits States to offer one or more home and community-based services (HCBS) to qualified elderly and disabled individuals under their State Medicaid plans. Those services are listed in § 440.182 of this chapter, and are described by the State, including any limitations of the services. This optional benefit is known as the State plan HCBS

benefit. This subpart describes what a State Medicaid plan must provide, and defines State responsibilities.

**§ 441.553 State plan requirements.**

A State plan that includes home and community-based services for elderly and disabled individuals must meet the requirements of this subpart.

**§ 441.556 Eligibility for home and community-based services under section 1915(i)(1) of the Act.**

(a) *Eligibility.* To be eligible for State plan HCBS under section 1915(i) of the Act, an individual must meet the following requirements:

(1) Be eligible for Medicaid under an eligibility group covered under the State's Medicaid plan.

(2) Have income that does not exceed 150 percent of the Federal Poverty Level (FPL). In determining whether the 150 percent of FPL requirement is met, the rules for determining income eligibility for the individual's eligibility group under the State's Medicaid plan, including any more liberal income disregards used by the State for that group under section 1902(r)(2) of the Act, apply.

(3) Reside in the home or community, not in an institution, in accordance with the following:

(i) According to standards for community living facilities, as prescribed by the Secretary.

(ii) If the individual living in a residence with four or more persons unrelated to the proprietor, which furnishes one or more treatments or services, the independent assessment must include documentation that the individual is living in a community setting, and not in an institution.

(4) Meet needs-based criteria for eligibility for the State plan HCBS benefit, as required in § 441.554(d).

(5) Be assessed to require at least one home and community-based service, as required in § 441.562(a)(vi).

(b) *State options.* The State may elect in the State plan amendment approved under this subpart not to apply the following requirements:

(i) Section 1902(a)(10)(C)(i)(III) of the Act, pertaining to income and resource eligibility rules for the medically needy living in the community, but only for the purposes of providing State plan HCBS.

(ii) Section 1902(a)(1) of the Act, pertaining to statewide application of Medicaid, but only for the purposes of providing State plan HCBS.

**§ 441.559 Needs-based criteria and evaluation.**

(a) *Needs-based criteria.* The State must establish needs-based criteria for determining an individual's eligibility under the State plan for the HCBS benefit, and may establish needs-based criteria for each specific service.

(1) Needs-based criteria are factors used to determine an individual's requirements for support. The criteria are not characteristics that describe the individual or the individual's condition. A diagnosis is not a sufficient factor on which to base a determination of need. A criterion can be considered needs-based if it is a factor that can only be ascertained for a given person through an individualized evaluation of need.

(2) Needs-based criteria defined by the State may include:

(i) Need for total support to perform two or more activities of daily living (ADLs) (as defined in section 7702B(c)(2)(B) of the Internal Revenue Code of 1986).

(ii) Need for significant assistance to perform ADLs.

(iii) Other risk factors as the State determines to be appropriate and describes in the State Medicaid plan.

(b) *More stringent institutional and waiver needs-based criteria.* The State plan HCBS benefit is available only if the State has in effect needs-based criteria (as defined in paragraph (a)(1) of this section), for receipt of services in nursing facilities as defined in section 1919(a) of the Act, intermediate care facilities for the mentally retarded as defined in § 440.150 of this chapter, and hospitals as defined in § 440.10 of this chapter under the State plan and for which the State has established long-term level of care criteria, or waivers offering HCBS, and these needs-based criteria are more stringent than the needs-based criteria for the State plan HCBS benefit. If the State defines needs-based criteria for individual State plan home and community-based services, the needs-based institutional eligibility criteria must be more stringent than the combined effect of needs-based State plan HCBS benefit eligibility criteria and individual service criteria.

(1) These more stringent criteria must meet the following requirements:

(i) Be included in the level of care determination process for each institutional service and waiver.

(ii) Be submitted for inspection by CMS with the State plan amendment that establishes the State Plan HCBS benefit.

(iii) Be in effect on or before the effective date of the State plan HCBS benefit.

(2) In the event that the State modifies institutional level of care criteria to meet the requirements under paragraph (b) of this section that such criteria be more stringent than the State plan HCBS needs-based eligibility criteria, individuals receiving Medicaid in an institution or waiver HCBS, as of the effective date of the State plan amendment, will continue to be eligible for the institutional services or waiver HCBS under the level of care criteria previously in effect. Such individuals will not be subject to the more stringent modified institutional criteria, until such time as the individual is discharged from the institution or waiver, or no longer requires that level of care.

(c) *Adjustment authority.* The State may modify the needs-based criteria established under paragraph (a) of this section, without prior approval from the Secretary, if the number of individuals enrolled in the State plan HCBS benefit exceeds the projected number submitted annually to CMS. The Secretary will approve a retroactive effective date for the State plan amendment modifying the criteria, as early as the day following the notification period required under paragraph (c)(1) of this section, if all of the following conditions are met:

(1) The State provides at least 60 days notice of the proposed modification to the Secretary, the public, and each individual enrolled in the State plan HCBS benefit.

(2) The State notice to the Secretary is submitted as an amendment to the State plan.

(3) The adjusted needs-based eligibility criteria (in combination with service-specific needs-based criteria, if any) for the State plan HCBS benefit are less stringent than all needs-based institutional and waiver level of care criteria in effect after the adjustment.

(4) Individuals who were found eligible for the State plan HCBS benefit before modification of the needs-based criteria under this adjustment authority must remain eligible for the HCBS benefit and specific services on the basis of the unmodified criteria, for at least 12 months, beginning on the date the individual first received medical assistance for such services.

(5) Individuals continue to receive HCBS under the unmodified criteria during the not less than 60-day notification period, irrespective of the date the individual first received medical assistance for such services.

(6) Any changes in service due to the modification of needs-based criteria under this adjustment authority are treated as actions as defined in § 431.201 and are subject to the requirements of part 431 subpart E of this chapter.

(7) In the event that the State modifies institutional level of care criteria to meet the requirements under paragraph

(b) of this section that such criteria be more stringent than the State plan HCBS needs-based eligibility criteria, the State may adjust the modified institutional level of care criteria under this adjustment authority. The adjusted institutional level of care criteria must be at least as stringent as those in effect before they were modified to meet the requirements in paragraph (b) of this section.

(d) *Independent evaluation and determination of eligibility.* Eligibility for the State plan HCBS benefit must be determined through an independent evaluation of each individual according to the requirements of § 441.556(a)(1) through (4). The independent evaluation complies with the following requirements:

(1) Is performed by an agent that is independent and qualified as defined in § 441.568 of this section.

(2) Applies the needs-based eligibility criteria that the State has established under paragraph (a) of this section, and the general eligibility requirements under § 441.556(a)(1) through (3).

(3) If applicable, includes the individual's authorized representative.

(4) Assesses the individual's strengths as well as support needs.

(5) Uses only current and accurate information from existing records, and obtains any additional information necessary to draw valid conclusions about the individual's support needs.

(6) Evaluations finding that an individual is not eligible for the State plan HCBS benefit are treated as actions defined in § 431.201 and are subject to the requirements of part 431 subpart E of this chapter.

(e) *Periodic redetermination.* Independent reevaluations of each individual receiving the State plan HCBS benefit must be performed at least every 12 months, to determine whether the individual continues to meet eligibility requirements. Redeterminations must meet the requirements of paragraph (d) of this section.

**§ 441.562 Independent assessment.**

(a) For each individual determined to be eligible for the State plan HCBS benefit, the State must provide for an independent assessment of need in order to establish a plan of care. The independent assessment must include the following:

(1) An objective evaluation of the individual's inability to perform two or more activities of daily living (ADLs) (as defined in section 7702(c)(2)(B) of the Internal Revenue Code of 1986) or need for significant assistance to perform ADLs.

(2) A face-to-face assessment of the individual. The face-to-face assessment must meet the following requirements:

(i) The assessment must be performed by an agent that is independent and qualified as defined in § 441.568 of this section.

(ii) If applicable, the assessment must include the individual's authorized representative.

(iii) The assessment must be conducted in consultation with the individual, the individual's spouse, family, guardian, appropriate treating and consulting health and support professionals caring for the individual, support staff, and other responsible parties.

(iv) The assessment must include an examination of the individual's relevant history, medical records (including the independent evaluation of eligibility), physical and mental health care and support needs and all information needed to develop the plan of care as required in § 441.565.

(v) The assessment must be guided by best practice and research on effective strategies that result in improved health and quality of life outcomes.

(vi) The assessment must apply the State's needs-based criteria for each service (if any) that the individual may require. Individuals are considered enrolled in the State plan HCBS benefit only if they meet the eligibility and needs-based criteria for the benefit, and are also assessed to require at least one home and community-based service offered under the State plan for medical assistance.

(vii) If the State offers individuals (including, if applicable, the individual's authorized representative) the option to self-direct the purchase of, or control the receipt of, a home and community-based State plan service or services, the assessment must include an evaluation of the support needs of the individual and the ability of the individual (with and without supports) to self-direct the purchase of, or control the receipt of, these services if the individual so elects.

(viii) For individuals living in a residence with four or more persons unrelated to the proprietor, that furnishes one or more treatments or services, the assessment must include documentation of whether the individual resides in the community, according to § 441.556(a)(3).

(ix) For individuals receiving habilitation services, documentation that no Medicaid services are provided which would otherwise be available to the individual, specifically including but not limited to services available to the individual through a program funded under section 110 of the Rehabilitation Act of 1973, or the Individuals with Disabilities Improvement Act of 2004.

(b) The independent assessment of need must be conducted at least every 12 months and as needed when the individual's support needs or circumstances change significantly, in order to revise the plan of care.

**§ 1.565 Plan of care.**

(a) *Plan of care.* Based on the independent assessment required in § 441.562, the State must develop (or approve, if the plan is developed by others) a written plan of care jointly with the individual (including, for purposes of this paragraph, the individual and the individual's authorized representative if applicable). The person-centered planning process must identify the individual's physical and mental health support needs, strengths and preferences, and desired outcomes. The plan must be developed in consultation with the individual's health care or support professionals, or other appropriate persons, as determined by the State, and where appropriate, with the individual's family, spouse, caregiver, guardian, or representative. When the plan of care is finalized between the parties, a written copy is provided to the individual. At a minimum, the plan must determine HCBS to be provided that meet the following requirements:

(1) Take into account the extent of, and need for, any family or other supports for the individual.

(2) Be consistent with the individual's strengths and support needs arising from the individual's physical, sensory, or intellectual disability.

(3) Prevent the provision of unnecessary or inappropriate care, and provide the HCBS that the individual is assessed to require.

(4) Include those services, the purchase or control of which the individual elects to self-direct, meeting the requirements of § 441.574(b) through (d).

(b) *Reassessment.* The plan of care must be reviewed and revised upon independent reassessment, as required in § 441.562, at least every 12 months and when the individual's circumstances or needs change significantly.

(c) *Shared authority.* The plan of care must afford the individual the opportunity, with information and supports, for active participation and shared authority in developing the plan of care.

**§ 441.568 Provider qualifications.**

(a) The State must provide assurances that necessary safeguards have been taken to protect the health and welfare of enrollees in State plan HCBS, and must define in writing adequate standards for providers (both agencies and individuals) of HCBS services and for agents conducting independent evaluation, independent assessment, and plan of care development.

(b) The State must define conflict of interest standards that ensure the independence of individual and agency agents who conduct (whether as a service or an administrative activity) independent evaluation of eligibility for State plan HCBS, independent assessment of need, or are involved in developing the plan of care. The conflict of interest standards apply to all individuals and entities, public or private. At a minimum, these agents must not be any of the following:

(1) Related by blood or marriage to the individual, or to any paid caregiver of the individual.

(2) Financially responsible for the individual.

(3) Empowered to make financial or health-related decisions on behalf of the individual.

(4) Providers of State plan HCBS for the individual, or those who have an interest in or are employed by a provider of State plan HCBS for the individual, except when the only willing and qualified agent to perform independent assessments and develop plans of care in a geographic area also provides HCBS, and the State devises conflict of interest protections including separation of agent and provider functions within provider entities, which are described in the State plan for medical assistance and approved by the Secretary.

(c) Qualifications for agents performing independent assessments and plans of care must include training in assessment of individuals whose physical or mental conditions trigger a potential need for home and community-based services and supports, and current knowledge of best practices to improve health and quality of life outcomes.

**§ 441.571 Definition of individual's representative.**

In this subpart, the term *individual's representative* means, with respect to an individual being evaluated for, assessed regarding, or receiving State plan HCBS, the following:

(a) The individual's legal guardian or other person who is authorized under State law to represent the individual for the purpose of making decisions related to the person's care or well-being.

(b) Any other person who is authorized by policy of the State Medicaid Agency to represent the individual including but not limited to a parent, a family member, or an advocate for the individual. When the State authorizes representatives pursuant to this paragraph, the State must have policies describing the process for appointment; the extent of decision-making authorized; and safeguards to ensure that the representative functions in the best interests of the participant.

**§ 441.574 Self-directed services.**

(a) *State option.* The State may choose to offer an election for self-directing HCBS. The term ''self-directed'' means, with respect to State plan HCBS listed in § 440.182 of this chapter, services that are planned and purchased under the direction and control of the individual, including the amount, duration, scope, provider, and location of the HCBS. For purposes of this paragraph, *individual* means the individual and, if applicable, the individual's representative as defined in § 441.571.

(b) *Plan of care requirement.* Based on the independent assessment required in § 441.562, the State develops (or approves, if the plan is developed by others) a plan of care jointly with the individual as required in § 441.565. If the individual chooses to direct some or all HCBS, the plan of care must meet the following requirements:

(1) Be developed through a person-centered process that is directed by the individual, builds upon the individual's ability (with and without support) to engage in activities that promote community life, respects individual preferences, choices, strengths, and involves families, friends, and professionals as desired or required by the individual.

(2) Specify the State plan HCBS that the individual will be responsible for directing.

(3) Identify the methods by which the individual will plan, direct or control services, including whether the individual will exercise authority over the employment of service providers or authority over expenditures from the individualized budget.

(4) Specify the role of family members and others whose participation is sought by the individual with respect to the State plan HCBS.

(5) Include appropriate risk management techniques, including contingency plans, that recognize the roles and sharing of responsibilities in obtaining services in a self-directed manner and assure the appropriateness of this plan based upon the resources and support needs of the individual.

(6) Describe the process for facilitating transition from self-direction and any circumstances under which transition out of self-direction is involuntary.

(c) *Employer authority.* If the plan of care includes authority to select, manage, or dismiss providers of the State plan HCBS, the plan must meet the following requirements:

(1) Specify the authority to be assumed by the individual, any limits to the authority, and specify parties responsible for functions outside the authority to be assumed.

(2) Specify the financial management supports, as required in paragraph (e) of this section, to be provided.

(d) *Budget authority.* If the plan of care includes an individualized budget (which identifies the dollar value of the services and supports under the control and direction of the individual), the plan must meet the following requirements:

(1) Describe the method for calculating the dollar values in the budget, based on reliable costs and service utilization.

(2) Define a process for making adjustments in dollar values to reflect changes in an individual's assessment and plan of care.

(3) Provide a procedure to evaluate expenditures under the budget.

(4) Specify the financial management supports, as required in paragraph (e) of this section, to be provided.

(5) Not result in payment for medical assistance to the individual.

(e) *Functions in support of self-direction.* When the State elects to offer self-directed State plan HCBS, it must also offer the following supports to individuals receiving the services and their representatives:

(1) Information and assistance consistent with sound principles and practice of self-direction.

(2) Financial management supports to meet the following requirements:

(i) Manage Federal, State, and local employment tax, labor, worker's compensation, insurance, and other requirements that apply when the individual functions as the employer of service providers.

(ii) Function as employer of record when the individual elects to exercise supervisory responsibility without employment responsibility.

(iii) Make financial transactions on behalf of the individual when the individual has personal budget authority.

(iv) Maintain separate accounts for each individual's budget and provide

periodic reports of expenditures against budget in a manner understandable to the individual.

**§ 441.577 State plan HCBS administration: State responsibilities and quality improvement.**

(a) *State plan HCBS administration*—(1) *State responsibilities.* The State must carry out the following responsibilities in administration of its State plan HCBS:

(i) *Number served.* The State will annually provide CMS with the projected number of individuals to be enrolled in the benefit and the actual number of unduplicated individuals enrolled in State plan HCBS in the previous year. If the State chooses to limit the number to be served at any point in time, as provided in § 441.577(a)(1)(ii), the State will annually provide to CMS the maximum number enrolled at one time.

(ii) *Optional limit to number served.* If the State chooses to set a limit for the maximum number of individuals to be enrolled in the State plan HCBS benefit (either annually or at any point in time), the following conditions must be met:

(A) The maximum number of individuals to be enrolled in the benefit is established and adjusted by a State plan amendment.

(B) If the State elects to maintain a waiting list for State plan HCBS, the State establishes and adheres to policies and procedures for formation and maintenance of a waiting list that complies with all applicable Federal and State requirements. Waiting list criteria and a formally established schedule and procedure for reevaluation and revision must be made public.

(iii) *Access to services.* The State must grant access to all State plan HCBS assessed to be needed, to individuals who have been determined to be eligible for the State plan HCBS benefit. The State may not limit access to one or more State plan HCBS according to type of disability or other characteristic, or limit the number of persons served by particular services. The State must not restrict the number of State plan HCBS that enrolled individuals may receive, or the scope and frequency of the HCBS (up to the approved service limitations, if any,) for reasons other than medical necessity as determined by the plan of care according to § 441.565.

(2) *Administration*—(i) *Option for presumptive payment.* (A) The State may provide for a period of presumptive payment, not to exceed 60 days, for Medicaid eligible individuals the State has reason to believe may be eligible for the State plan HCBS benefit. FFP is available as administration of the approved State plan for evaluation of eligibility for the State plan HCBS benefit under § 441.559(d) and assessment of need for specific HCBS under § 441.562(a), prior to an individual's receipt of State plan HCBS services or determination of ineligibility for the benefit.

(B) If an individual the State has reason to believe may be eligible for the State plan HCBS benefit is evaluated and assessed under the presumptive payment option and found not to be eligible for the benefit, FFP as administration of the approved State plan will be available for the evaluation and assessment. The individual so determined will not be considered to have enrolled in the State plan HCBS benefit for purposes of determining the annual number of participants in the benefit.

(ii) *Reimbursement methodology.* The State plan amendment to provide State plan HCBS must contain a description of the reimbursement methodology for each covered service. To the extent that the reimbursement methodologies for any self-directed services differ from those descriptions, the method for setting reimbursement methodology for the self-directed services must also be described.

(iii) *Operation.* The State plan amendment to provide State plan HCBS must contain a description of the State Medicaid agency line of authority for operating the State plan HCBS benefit, including distribution of functions to other entities.

(b) *Quality improvement strategy: Program performance and quality of care*—(1) *Quality improvement strategy.* States will maintain an HCBS quality improvement strategy that includes methods for ongoing measurement of program performance, quality of care, and mechanisms for remediation and improvement proportionate to the scope of services in the State plan HCBS benefit and the number of individuals to be served.

(2) *Program performance measures.* The States' quality improvement strategy must be designed to measure and provide evidence of program performance. Program performance measures must be made available to CMS upon request and include indicators approved or prescribed by the Secretary.

(3) *Quality of care measures.* The State's quality improvement strategy must be designed to measure outcomes associated with the receipt of home and community-based services, particularly with respect to the health and welfare of the recipients of these services. Quality of care measures must be made available to CMS upon request and include indicators approved or prescribed by the Secretary.

(Catalog of Federal Domestic Assistance Program, No. 93.778, Medical Assistance Program.)

Dated: October 31, 2007.

**Kerry Weems,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

Approved: December 20, 2007.

**Michael O. Leavitt,**

*Secretary.*

**Editorial Note:** This document was received at the Office of the Federal Register on March 27, 2008.

[FR Doc. 08–1084 Filed 3–28–08; 11:11 am]

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**Federal Register**

Vol. 73, No. 66

Friday, April 4, 2008

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## FEDERAL REGISTER PAGES AND DATE, APRIL

17241–17880 ..... 1
17881–18148 ..... 2
18149–18432 ..... 3
18433–18700 ..... 4

## CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
7746 (See 8228) ..... 18141
7747 (See 8228) ..... 18141
7987 (See 8228) ..... 18141
8097 (See 8228) ..... 18141
8214 (See 8228) ..... 18141
8228 ..... 18141
8229 ..... 18425
8230 ..... 18427
8231 ..... 18429
8232 ..... 18431

**Executive Orders:**
11651 (See Proclamation 8228) ..... 18141

**Administrative Orders:**
Presidential Determinations:
No. 2008-15 of March 19, 2008 ..... 17241
No. 2008-17 of March 28, 2008 ..... 17879
No. 2008-16 of March 24, 2008 ..... 18147

**5 CFR**

1201 ..... 18149

**7 CFR**

1 ..... 18433
457 ..... 17243

**Proposed Rules:**
301 ..... 17930
319 ..... 17930

**8 CFR**

212 ..... 18384
235 ..... 18384

**9 CFR**

94 ..... 17881

**12 CFR**

268 ..... 17885

**14 CFR**

39 ..... 18433
61 ..... 17243
71 ..... 17887, 17888, 18151, 18436, 18437, 18438, 18439
97 ..... 18152

**Proposed Rules:**
39 ..... 17258, 17260, 17935, 17937, 18220, 18461
71 ..... 18222

**16 CFR**

**Proposed Rules:**
305 ..... 17263

**17 CFR**

200 ..... 17810
239 ..... 17810
240 ..... 17810

**18 CFR**

35 ..... 17246

**21 CFR**

210 ..... 18440
211 ..... 18440
510 ..... 18441
520 ..... 18441
522 ..... 17890
526 ..... 18441
558 ..... 18441

**22 CFR**

41 ..... 18384
53 ..... 18384
309 ..... 18154

**26 CFR**

1 ..... 18159, 18160
301 ..... 18442

**30 CFR**

756 ..... 17247

**Proposed Rules:**
938 ..... 17268

**32 CFR**

**Proposed Rules:**
199 ..... 17271

**33 CFR**

117 ..... 17249, 17250

**Proposed Rules:**
165 ..... 18222, 18225

**36 CFR**

1253 ..... 18160

**Proposed Rules:**
1280 ..... 18462

**40 CFR**

49 ..... 18161
52 ..... 17890, 17893, 17896
60 ..... 18162
61 ..... 18162
63 ..... 17252, 18169
81 ..... 17897
180 ..... 17906, 17910, 17914, 17918
271 ..... 17924, 18172

**Proposed Rules:**
52 ..... 17289, 17939, 18466
63 ..... 17292, 17940, 18229, 18334
271 ..... 17944, 18229

**42 CFR**

422 ..... 18176
423 ..... 18176

**Proposed Rules:**
431 ..... 18676
440 ..... 18676
441 ..... 18676

**44 CFR**

62 ..... 18182
64 ..... 17928, 18188
67 ..... 18189, 18197
**Proposed Rules:**
67 ..... 18230, 18243, 18246

**47 CFR**

101 ..... 18443
**Proposed Rules:**
73 ..... 18252

**48 CFR**

**Proposed Rules:**
2 ..... 17945
9 ..... 17945
13 ..... 17945
17 ..... 17945
36 ..... 17945
42 ..... 17945
53 ..... 17945

**49 CFR**

**Proposed Rules:**
171 ..... 17818
173 ..... 17818
174 ..... 17818
179 ..... 17818

**50 CFR**

17 ..... 17782
648 ..... 18215, 18443
665 ..... 18450
679 ..... 18219
**Proposed Rules:**
300 ..... 18473
622 ..... 18253
635 ..... 18473
648 ..... 18483
697 ..... 18253

## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT APRIL 4, 2008

**AGRICULTURE DEPARTMENT**

**Rural Housing Service**

Annual Guarantee Fee Due Date; published 3-5-08

**AGRICULTURE DEPARTMENT**

Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statues; published 4-4-08

**ENVIRONMENTAL PROTECTION AGENCY**

Ohio; Revised Oxides of Nitrogen (NOx) Regulation, Phase II, and Revised NOx Trading Rule; published 2-4-08

**FEDERAL COMMUNICATIONS COMMISSION**

Fixed Microwave Services; Correction; published 4-4-08

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Technical Amendment; Withdrawal of Approval of NADAs:

Animal Drugs, Feeds, and Related Products; published 4-4-08

**HOMELAND SECURITY DEPARTMENT**

**Coast Guard**

Safety Zone:

Fireworks Display, Pasquotank River, Elizabeth City, NC; published 3-11-08

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Simplification of Entity Classification Rules; Correction; published 4-4-08

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

Olives Grown in California; Decreased Assessment Rate; comments due by 4-7-08; published 2-7-08 [FR E8-02193]

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

South American Cactus Moth; Quarantine and Regulations; comments due by 4-11-08; published 2-11-08 [FR E8-02477]

**AGRICULTURE DEPARTMENT**

**Forest Service**

Special Areas; Roadless Area Conservation; Applicability to the National Forests in Idaho; comments due by 4-7-08; published 1-7-08 [FR 07-06305]

**AGRICULTURE DEPARTMENT**

**Grain Inspection, Packers and Stockyards Administration**

Swine Contractors; comments due by 4-8-08; published 2-8-08 [FR E8-02376]

Weighing, Feed, and Swine Contractors; comments due by 4-11-08; published 2-11-08 [FR 08-00577]

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Endangered and Threatened Wildlife and Plants:

Endangered Status for Black Abalone; comments due by 4-10-08; published 1-11-08 [FR E8-00335]

Fisheries of the Exclusive Economic Zone Off Alaska;

Atka Mackerel in the Bering Sea and Aleutian Islands Management Area; comments due by 4-7-08; published 3-21-08 [FR 08-01061]

Fisheries of the Exclusive Economic Zone Off Alaska:

Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska; comments due by 4-7-08; published 3-26-08 [FR 08-01073]

Fisheries of the Northeastern United States:

Atlantic Sea Scallop Fishery; Framework Adjustment 19; comments due by 4-8-08; published 3-19-08 [FR 08-01055]

**COMMERCE DEPARTMENT**

**Patent and Trademark Office**

Examination of Patent Applications That Include Claims Containing Alternative Language; comments due by 4-9-08; published 3-10-08 [FR E8-04744]

**ENVIRONMENTAL PROTECTION AGENCY**

Approval and Promulgation of Implementation Plans:

Reasonably Available Control Technology for Oxides of Nitrogen; New Jersey; comments due by 4-7-08; published 3-6-08 [FR E8-04346]

Community Right-to-Know; Corrections and 2007 Updates:

Toxics Release Inventory; North American Industry Classification System Reporting Codes; comments due by 4-7-08; published 3-6-08 [FR E8-04387]

Environmental Statements; Notice of Intent:

Coastal Nonpoint Pollution Control Programs; States and Territories—

Florida and South Carolina; Open for comments until further notice; published 2-11-08 [FR 08-00596]

Final Authorization of State Hazardous Waste Management Program Revisions; Utah; comments due by 4-7-08; published 3-7-08 [FR E8-04251]

Final Authorization of State Hazardous Waste Management Program Revision; Utah; comments due by 4-7-08; published 3-7-08 [FR E8-04253]

Final Authorization of State Hazardous Waste Management Program Revisions:

Colorado; comments due by 4-11-08; published 3-12-08 [FR E8-04978]

Hazardous Waste Management System; Hazardous Waste Manifest System Modification; comments due by 4-11-08; published 2-26-08 [FR E8-03615]

Inert ingredients:

Denial of Pesticide Petitions, etc.; comments due by 4-8-08; published 2-8-08 [FR E8-02175]

Land Disposal Restrictions:

Site Specific Treatment Variance etc.; EnergySolutions Facility in Clive, UT; comments due by 4-7-08; published 3-6-08 [FR E8-04428]

Site Specific Treatment Variance; EnergySolutions Facility in Clive, UT; comments due by 4-7-08; published 3-6-08 [FR E8-04449]

Proposed Tolerance Actions:

2,4-D, Bensulide, et al.; comments due by 4-7-08; published 2-6-08 [FR E8-02094]

**FEDERAL COMMUNICATIONS COMMISSION**

Creation of a Low Power Radio Service; comments due by 4-7-08; published 3-6-08 [FR E8-04456]

**FEDERAL RESERVE SYSTEM**

Truth in Lending; comments due by 4-8-08; published 1-9-08 [FR E7-25058]

**FEDERAL RETIREMENT THRIFT INVESTMENT BOARD**

Participants Choices of TSP Funds; comments due by 4-9-08; published 3-10-08 [FR E8-04776]

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Proposal to Permit the Use of Ultrafiltered Milk; Extension of Comment Period:

Cheeses and Related Cheese Products; comments due by 4-11-08; published 2-11-08 [FR E8-02454]

**HOMELAND SECURITY DEPARTMENT**

**Coast Guard**

Drawbridge Operation Regulations:

Mill Neck Creek, Oyster Bay, NY; comments due by 4-7-08; published 3-7-08 [FR E8-04470]

Safety Zone:

Red Bull Air Race; San Diego Bay, San Diego, CA; comments due by 4-11-08; published 4-3-08 [FR E8-06892]

Security Zone:

Anacostia River, Washington, DC; comments due by 4-7-08; published 3-7-08 [FR E8-04463]

MacDill Air Force Base, Tampa Bay, FL; comments due by 4-7-08; published 2-5-08 [FR E8-01765]

Special Local Regulations:

Recurring Marine Events in the Fifth Coast Guard District; comments due by 4-9-08; published 3-10-08 [FR E8-04707]

Temporary Restricted Anchorage:
Seventh Coast Guard District, Captain of the Port Zone Jacksonville; comments due by 4-10-08; published 3-11-08 [FR E8-04757]

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

Endangered and Threatened Wildlife and Plants:
12 Month Finding on Petition to List Bonneville Cutthroat Trout as Threatened or Endangered; comments due by 4-7-08; published 2-7-08 [FR E8-02222]

**JUSTICE DEPARTMENT**

Standards for the Administrative Collection of Claims; comments due by 4-7-08; published 3-7-08 [FR E8-04586]

**LABOR DEPARTMENT**

**Employment Standards Administration**

Family and Medical Leave Act of 1993; comments due by 4-11-08; published 2-11-08 [FR E8-02062]

**LABOR DEPARTMENT**

**Wage and Hour Division**

Family and Medical Leave Act of 1993; comments due by 4-11-08; published 2-11-08 [FR E8-02062]

**NUCLEAR REGULATORY COMMISSION**

Decommissioning Planning; comments due by 4-7-08; published 1-22-08 [FR E8-00574]

**PERSONNEL MANAGEMENT OFFICE**

Time-in-Grade Rule Eliminated; comments due by 4-7-08; published 2-6-08 [FR E8-02122]

**POSTAL SERVICE**

New Standards to Prohibit the Mailing of Replica or Inert Munitions; comments due by 4-7-08; published 3-7-08 [FR E8-04459]

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness Directives:
Agusta S.p.A. Model AB 139 and AW 139 Helicopters; comments due by 4-7-08; published 3-7-08 [FR E8-04461]
Airbus Model A318, A319, A320, and A321 Airplanes; comments due by 4-7-08; published 3-13-08 [FR E8-05017]
Bell Helicopter Textron Canada Models 206L, L-1, L-3, L-4, and 407 Helicopters; comments due by 4-7-08; published 3-7-08 [FR E8-04495]
Bombardier Model CL-600-2C10 (Regional Jet Series 700, 701 & 702), CL-600-2D15 (Regional Jet Series 705), and CL-600-2D24 (Regional Jet Series 900) Airplane; comments due by 4-10-08; published 3-11-08 [FR E8-04770]
Bombardier Model CL 600 2B19 (Regional Jet Series 100 & 440) Airplanes; comments due by 4-7-08; published 3-6-08 [FR E8-04322]
Bombardier Model DHC-8-102, DHC-8-103, DHC-8-106, DHC-8-201, DHC-8-202, DHC-8-301, DHC-8-311, and DHC-8-315 Airplanes; comments due by 4-10-08; published 3-11-08 [FR E8-04772]
Bombardier Model DHC-8-400, DHC-8-401, and DHC 8 402 Airplanes; comments due by 4-10-08; published 3-11-08 [FR E8-04771]

Airworthiness directives:
Eurocopter Model AS 332 L2 Helicopters; comments due by 4-7-08; published 2-5-08 [FR E8-01701]

Airworthiness Directives:
Lindstrand Balloons Ltd. Models 42A, 56A, 77A, 105A, 150A, 210A, 260A, 60A, 69A, 90A, 120A, 180A, 240A, and 310A Balloons; comments due by 4-11-08; published 3-12-08 [FR E8-04759]
Rolls-Royce plc RB211 Series Turbofan Engines; comments due by 4-7-08; published 2-6-08 [FR E8-02028]
Saab Model SAAB SF340A and SAAB 340B (Including Variant 340B (WT)) Series Airplanes; comments due by 4-11-08; published 3-12-08 [FR E8-04660]

Amendment of Class E Airspace; Franklin, PA; comments due by 4-7-08; published 2-21-08 [FR 08-00766]

Class E Airspace; comments due by 4-7-08; published 2-21-08 [FR 08-00722]

Establishment of Class E Airspace:
Rumford, ME; comments due by 4-7-08; published 2-20-08 [FR 08-00718]
Swans Island, ME; comments due by 4-7-08; published 2-20-08 [FR 08-00717]
Vinalhaven, ME; comments due by 4-7-08; published 2-20-08 [FR 08-00719]

Modification of Restricted Areas; Camp Shelby, MS; comments due by 4-7-08; published 2-20-08 [FR E8-03138]

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Guidance Necessary to Facilitate Electronic Tax Administration—Updating of Section 7216 Regulations; comments due by 4-7-08; published 1-7-08 [FR 08-00002]

**TREASURY DEPARTMENT**

Standards for the Administrative Collection of Claims; comments due by 4-7-08; published 3-7-08 [FR E8-04586]

## LIST OF PUBLIC LAWS

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**S. 2733/P.L. 110–198**

Higher Education Extension Act of 2008 (Mar. 24, 2008; 122 Stat. 656)

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